PROCEEDINGS

OF THE

Southern New Hampshire Bar Association

1896

PROCEEDINGS

OF THE

SOUTHERN NEW HAMPSHIRE BAR ASSOCIATION

AT ITS

FIFTH ANNUAL MEETING

HELD AT

NASHUA, N. H., FEBRUARY 26, 1896.

CONCORD, N. H.:
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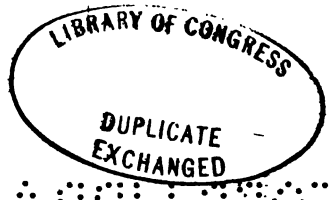

TABLE OF CONTENTS.

PUBLICATIONS

OF THE

SOUTHERN NEW HAMPSHIRE

BAR ASSOCIATION.

Volume Two - - Part One.

OFFICERS AND COMMITTEES.

OFFICERS AND COMMITTEES

OF THE

SOUTHERN NEW HAMPSHIRE BAR ASSOCIATION,

FOR THE YEAR 1896.

OFFICERS.

President—IRA COLBY, of Claremont.
First Vice-President—ELIJAH M. TOPLIFF, of Manchester.
Second Vice-President—HENRY B. ATHERTON, of Nashua.
Secretary and Treasurer—ARTHUR H. CHASE, of Concord.

Executive Committee.

Edwin F. Jones, of Manchester; Harry G. Sargent, of Concord; Thomas D. Luce, of Nashua; Ira Colby, of Claremont; Arthur H. Chase, of Concord.

STANDING COMMITTEES.

On Publication.

James A. Edgerly, of Somersworth; Walter D. Hardy, of Concord; William W. Bailey, of Nashua.

On Legal History and Biography.

Henry E. Burnham, of Manchester; Francis C. Faulkner, of Keene; Thomas E. O. Marvin, of Portsmouth; James E. Barnard, of Franklin; Josiah G. Bellows, of Walpole; Charles J. Hamblett, of Nashua; Allen Hollis, of Concord.

On Pictures and Portraits.

Hosea W. Parker, of Claremont; James F. Brennan, of Peterborough; John E. Young, of Exeter; William A. Plummer, of Laconia; Arthur W. Silsby, of Concord.

On the Earlier Publication of Opinions by the Court.

Reuben E. Walker, of Concord; David A. Taggart, of Manchester; Alfred T. Batchelder, of Keene.

On the Revision of the Rules of Court.

Thomas D. Luce, of Nashua; Amos J. Shurtleff, of Concord; Edwin P. Thompson of Laconia; Charles H. Knight, of Exeter; John McCrillis, of Newport.

On Remedial Procedure.

Calvin Page, of Portsmouth; Jeremiah J. Doyle, of Nashua; Charles B. Gafney, of Rochester; Joshua G. Hall, of Dover; Carl E. Knight, of Milford; Edward G. Leach, of Franklin; James W. Remick, of Littleton.

On the Literature of the Law: or, Improvements in Legal Instruments.

John Kivel, of Dover: Stephen S. Jewett, of Laconia; Henry W. Stevens, of Concord; Frank C. Livingston, of Manchester; George E. Bales, of Wilton; L. W. Barton, of Newport; Elmer J. Smart, of Rochester.

On Professional Deportment.

David Cross, of Manchester; John S. H. Frink, of Portsmouth; Charles H. Burns, of Wilton; William L. Foster, of Concord; Ellery A. Hibbard, of Laconia.

FIFTH ANNUAL MEETING.

NOTICE OF THE FIFTH ANNUAL MEETING.

CONCORD, N. H., Feb. 15, 1896.

You are cordially invited to attend the fifth annual meeting of the Southern New Hampshire Bar Association, to be held at the Armory in Nashua, on Wednesday, February 26, 1896, at 11 o'clock a. m.

PROGRAMME.

Election of officers and general business.
President's address . . Charles H. Burns, of Wilton.
Annual address, . . . William L. Putnam, of Portland, Me.
Short addresses and biographies.
General discussion.

The association will dine at the Armory, at 2 o'clock p. m. This will give to lawyers from all parts of the state an opportunity to attend the exercises and banquet, and return home the same evening.

The post-prandial exercises will be in charge of Thomas D. Luce, of Nashua.

In order that the committee may perfect their arrangements, each one who receives this invitation is requested to indicate upon the enclosed postal whether they expect to be present, and mail the same not later than Feb. 24th.

FRANK S. STREETER,
HARRY G. SARGENT,
HENRY B. ATHERTON,
CHARLES H. BURNS,
ARTHUR H. CHASE,
Executive Committee.

FIFTH ANNUAL MEETING.

BUSINESS.

The fifth annual meeting of the Southern New Hampshire Bar Association was held at the Armory in Nashua, on the twenty-sixth day of February, 1896, in accordance with the foregoing notice. The attendance of lawyers from all parts of the State was large and the meeting was an enthusiastic one.

Officers and committees for the year 1896 were chosen as set forth on pages 5 and 6 *supra*.

Charles H. Burns

THE PRESIDENT'S ADDRESS.

BY CHARLES H. BURNS, OF WILTON.

GENTLEMEN OF THE BAR: The object of this Association, as stated in its constitution, is "to promote the honor and dignity of the Bar; good fellowship among its members; to elevate its standard in the public confidence with a view of producing and exercising such an influence in the community as may properly come from the members of the legal profession."

The honor and dignity of the Bar, and its influence in the community, as well as its place in the public confidence, depend upon the standard of its learning, integrity, and public service. It must not only cultivate "good fellowship among its members," but it must be an important working factor in the progress of humanity. The essential importance of honesty in the profession is conceded; but the character of the learning and scope of the accomplishments necessary to an adequate equipment for the great profession is not so well defined or understood.

In the able address of President Frink, who is one of the examiners of applicants for admission to the New Hampshire Bar, and a gentleman whose learning and ability are a source of pride to this Association, to which we listened with delight one year ago, I find these words,—"The student may be profoundly ignorant of history, biography, science, the classics, and poetry, and yet pass a most successful examination for admission to practise;" and while he does not "enter a sweeping protest against this mode of procedure," he expresses the belief that if a lawyer "would

ever attain the highest honors of the profession, in statecraft, on the bench, or in politics, he must know something beyond the mere technics of every-day law." This opinion is well founded and fully justified by the lives of eminent lawyers who have won renown in the field of jurisprudence and the higher walks of life; and it is well to call the attention of the Bar to the importance of possessing something more than a mere technical knowledge of "every-day law," and even a technical knowledge of their profession, to thoroughly qualify them for the work of a great vocation.

Lawyers are not only required to deal with the narrow technicalities of the law, but the broad principles of equity; they must interpret and administer the sense of the community; they must conserve the peace and dignity of the state; they must be prepared to meet any emergency, and to fill great places; they are compelled to formulate and make tangible principles by which governments are upheld. How can these requirements be successfully met except by comprehensive learning, wisdom, and culture: and such learning should not only be thorough in jurisprudence, but it should cover broader fields of knowledge and investigation.

The law of New Hampshire is the outgrowth of the civil law of Rome and the common law of England. How much of it is from Italy, and how much from Britain, it may not be possible or important to exactly know; but, as it is a growth, its evolution, and the influences that have conspired to produce it, deserve investigation. In order to understand this marvellous system, and, what is of more consequence, to be thoroughly prepared for the discharge of the highest duties of citizenship, it is necessary to know something more than what is called the law. Justinian, Cicero and the twelve tables of Rome, Bracton, Coke, the great lawyers of the ages, Magna Charta and the Declaration of Independence, are not the only men and instruments

to whom and to which civilization is indebted for its protection and progress. Homer, Socrates, Shakespeare, the Saviour, and the Bible, through the morals and precepts they have taught, have found their way into the proclamations of rulers and the edicts of courts. Without a thorough acquaintance with these great teachers, the blessings they have wrought, and the reforms they have induced in the government of the human race, there is a deficiency in important sources of intellectual enjoyment and legal training.

The foremost historian of the English people, in describing the conception and birth of the Great Charter, the earliest monument of English freedom, which secured to freemen, but not to slaves, trial by jury, the protection alike of both poor and rich, and the priceless boon of free and unbought justice; which "marks the transition, from the age of traditional rights, preserved in the nation's memory and officially declared by the Primate, to the age of written legislation, of Parliament and Statutes," found it necessary to trace the growth of the great ideas which it embodies, through myth, and romance, and legend, poetry, tradition, literary, social, and religious criticism, and literature in all its phases, as well as the Roman and canon law, and the rise and fall of rulers and dynasties, with their star chambers and courts.

Whoever studies the great Habeas Corpus act, "produce the prisoner whom you unlawfully detain," passed in the reign of Charles the Second, learns that it introduced no new principle into British law, and neither did it confer any new right upon the British subject: they were privileges that had been enjoyed for many centuries. And the great bulwarks of English and American liberty have been erected from material furnished by the builders of old. "To-day makes use of yesterday, the world over."

How delightful, and helpful, and necessary it is to be familiar with the old storehouses of wisdom and learning.

Matthew Arnold says of that invaluable possession and charm, called culture, "which is the only true basis for class distinction," that it consists of "the best that has been thought and said in the world." It is not to know the most, but the best. It is quality, not quantity; and, as human life has its limits, the great enigma seems to be, how to learn what is the best that has been thought and said. What has been thought, but not said, is hardly ascertainable; but the spoken thought, which has been preserved, is open to discovery. Its conquest is culture.

What vast equipment is necessary to enable one to become a great lawyer! Our own Judge Ladd once said,—"There is no branch of learning, no fact of science, no principle in morals or ethics, no lesson to be found in the history or literature of the world, that may not be of infinite service to him, in the discharge of the high and ofttimes the sacred duties he has undertaken to perform." Of course nothing can atone for a want of a thorough acquaintance with the principles of the law found in jurisprudence and as taught by lawyers and judges, who are learned in this unsurpassed science; but the profession must never lose sight of the fact that legislatures and courts will, in the end, register immortal principles evolved by "the best thought in the world;" and that "the best thought" does not come alone from the legal fraternity, but from the master minds in the great universe of intellect, in all departments of human struggle, and to find and follow the origin and progress of truth and civilization is the persistent work of a lifetime.

All excellent literatures, it is maintained, have their origin in poetry. Who that is ignorant of the best poetry and the noblest literature can ever expect to illumine any great profession? As well might he be ignorant of history. Most of the priceless principles of law and equity which govern the modern world have been sung in ballads and recited in poetry and oration until so firmly embedded

in the human heart and intellect that they have been infused into the law of the land. Ignorance of the sources of these vital principles, what gave them birth and place, is inexcusable. It is not to fully know the origin of that marvellous science called the common law. It is a lack of information upon "the best that has been thought and said in the world." It is to be without knowledge of the most sublime "displays of human intellect."

Chaucer, the father of English poetry, whose advent into the world is claimed to have been the dawn of the intellectual day, was a learned man, who attended the courts of Edward the Third and Richard the Second. He exposed the hypocrisy of priests and the tyranny of avarice. He was a power in the evolution of the law of England. And Milton and Bunyan, Burns and Whittier, with scores of other great literary geniuses of the Old and the New World, have wrought *for better things in the law*, with Eldon and Erskin, Marshall and Story.

It was the opinion of Lord Eldon that "a lawyer hardly can be both learned in his profession and accomplished in political science;" and it must be confessed that law and politics do not always work well together; but it is difficult to see how a lawyer can attain the "mark of his high calling" without a thorough knowledge of the science of government; and, indeed, without a broad, liberal, and discerning knowledge of great principles that move the heart, and in the end control mankind.

But education in its broadest sense, as obtained from the best books, does not complete the lawyer's outfit. His talent is no longer displayed only before court and jury, and in state craft. The science which he would master is advancing with the general enlightenment of the age. His sphere of action has been enormously enlarged. There is a practical side to his work which may be of immense value to clients. He must have a reliable knowledge of business; of modern methods of trade, transportation, finance,

investment, invention; he must be a good observer if he would be a safe adviser; he must have common sense; and it must be trained and disciplined; his work is pacific as well as contentious; and the most successful and useful of the craft to-day are those who employ their transcendent forces to keep their clients out of court instead of in. By so doing they serve the best interests of their employers, the court, and the public at large, and in a way that brings emolument to themselves and honor to the profession.

It must be remembered, as has been said by another, that "litigation is a means, not an end. More than this, it is an agency, which, like the knife of the surgeon, should be the practitioner's last resort. The spirit of the age, which requires statesmen to avoid war and secure peace with honor, physicians to foresee the approach of disease and to ward off its attacks, requires that our profession shall devote its wisdom to the prevention, rather than to the carrying on, of litigation. In this respect the leaders, and perhaps the great body of the profession, are meeting a requirement of the times. They will satisfy remaining requirements when they so simplify and so readjust legal procedure that litigation, when resorted to, shall not mean tedious delay, ruinous expense, and uncertain results. The one reform is already well advanced. The other cannot be long delayed."

There are two kinds of lawyers who, I think, do not furnish satisfactory portraits. One is the lawyer who is content with the diplomas he happens to have when he is fortunate enough to be admitted to practise. He stops studying and growing. He toils not; neither does he spin. He knows as much as he ever will. He spends his days growling and grumbling on the street, in loafing places, or in a dingy office, which is full of dust and destitute of books. He gets a living by his practices rather than his practice. He is neither ornamental, useful, nor successful.

The other is the lawyer who is wholly immersed in his trade; who burrows in it and rolls it under his tongue as a sweet morsel; who knows his profession and nothing else, and that crucified; who gives his whole life, thought, and energy to it; who jumps on some little, small, technical flaw or weakness as a hyena springs upon its prey; who can split hairs with nicety and precision, but who is incapable of conceiving or evolving a large, liberal, useful principle; travels in a narrow and restricted groove; ignores society, the community, government, humanity, everything except that which helps him to make money and a legal point. The law, it is said, is a jealous mistress. Surely there would seem to be no occasion for jealousy of a devotee so absorbed in "quirks and quibbles," and so utterly destitute of attractions and accomplishments that are essential in the construction of a finished man and a useful citizen. Victory and Westminster Abbey are not for such as these.

We have two books which together give an excellent account of the lawyers of New Hampshire. They are the "Life of William Plumer," and the work just published by the late Mr. Bell, called the "Bench and Bar of New Hampshire." In the life of Plumer a most interesting description is given of the Rockingham Bar in the days of Webster. The Bar of that county, at that time, was one of the ablest and most distinguished of any in this country. It contained giants: Daniel Webster, Jeremiah Mason, Jeremiah Smith, Ichabod Bartlett, William Plumer, and others deservedly known to fame. It was in the palmy days of the Sullivans, that remarkable family of lawyers, attorney-generals, governors, and senators. It was there and then that a superb and solid foundation for the legal profession in the Granite State was laid.

The influence of this company of great lawyers has been felt every hour since, and has left its lasting impress on the work and character of the New Hampshire Bar.

The effect of the example of these splendid men is seen and recorded in the "Bench and Bar," to which I have alluded, which consists of brief, concise statements of the lives of lawyers and judges who have practised and presided in New Hampshire, and who have passed on to the bar of eternity. A touching fact connected with the book is that its first biography is of its distinguished author, whose hand rested forever when this work was substantially completed.

A perusal of this series of biographical sketches of New Hampshire lawyers, which are simple accounts of the legal lives of the subjects, what they accomplished, and how they did it, impresses the reader with the conclusion that the lawyers of our state are not easily outranked in fidelity or ability. It is doubtful if any other territory no larger than our little state can match the list with an equal number of large, brainy men, whose achievements in the field of law have been so great and beneficent.

Some of the causes originating within the state, in which these learned men have wrought, either as counsel or judges, have become celebrated monuments of law. The Dartmouth College case, when Daniel Webster, in a matchless legal argument, revealed the imperial powers of a master mind; the decision of Joel Parker, then chief-justice of the state, in direct conflict with that eminent judge, Joseph Story, that an attachment on mesne process from a state court was a lien which could not be destroyed by an inferior court of the United States, and that such court had no supervising power over a state court, which was subsequently sustained by the supreme court of the United States; the equitable principle enunciated by this same great judge in *Brittain* v. *Turner*, marking a memorable advance in the administration of law. These, with others scarcely less significant, were arguments and decisions of national importance, resulting in the establishment of great principles of surpassing interest and far-reaching effect.

No more precious legacy could be bequeathed to us who yet remain than the record of these noble men. It is a record in which we can take just pride, and from which we can derive conscious strength and encouragement.

These men have not only accomplished a great work in the profession of law, but many of them have done conspicuous service for the state in other lines of action. They have joined and sometimes led her troops in time of war. They have acted as pilots in many a political storm. They have been heard in her behalf by listening senates, and have been foremost factors in the formation and preservation of the government. Their memory is indeed a rare inheritance.

But their work, grand and great as it was, can yet be surpassed. Spurred by their examples, studying their victories, and profiting by their mistakes, the living lawyers of to-day can make marked improvement upon the methods and manners of the past, the customs of court, and the practice of the law, which shall greatly benefit their fellowmen.

Then let this be the determination of the Bar of New Hampshire. In the language of Mr. Emerson, "Let us shame the fathers by superior virtue in the sons."

Gentlemen, I thank you most earnestly for the very great honor I have received from your Association.

ANNUAL ADDRESS.

BY WILLIAM L. PUTNAM, OF PORTLAND, ME.

The condition of the law in England during the early part of the present century has been described in very emphatic terms on the common-law side by Kerly, in his "History of Equity," as follows:

"It was not indeed the Chancery only that needed reforming; the procedure and practice of the common-law courts had become buried under a mass of technicalities and fictions, such that the steps which were really necessary for the discovery of the parties' rights were generally but a small proportion of those which had actually to be taken in an action, while the remaining steps, not only increased the cost and duration of the litigation, but formed so many traps for an unwary pleader or advocate, and caused the time of the judges to be constantly occupied in the discussion of the merest legal conundrums, which bore no 'relation to the merits of any controversies except those of pedants,' or 'in the direction of a machinery which wholly belonged to the past.'"

As to the equity side, Sir Samuel Romilly, who was one of the greatest of all practising chancery lawyers, is alleged to have said "that the number of suitors in Chancery is nothing compared to the community, or this court would long ago have been abolished as a nuisance."

And Lord Campbell in referring to it speaks of "damned custom which reconciles us to all enormities."

Dickens, for whom his friends assumed too much credit for the reforms in Chancery, because these reforms had been

March
1890 William D. Putnam

under thorough consideration before "Bleak House" was written, and the great Chancery Commission of 1850 was appointed two years before that date, described the supposed evils of the Lord Chancellor's court in the following heated terms:

"Never can there come fog too thick, never can there come mud and mire too deep, to assort with the groping and floundering condition which this High Court of Chancery, most pestilent of hoary sinners, holds, this day, in the sight of heaven and earth.

"On such an afternoon, if ever, the Lord High Chancellor ought to be sitting here—as here he is—with a foggy glory round his head, softly fenced in with crimson cloth and curtains, addressed by a large advocate with great whiskers, a little voice, and an interminable brief, and outwardly directing his contemplation to the lantern in the roof, where he can see nothing but fog. On such an afternoon, some score of members of the High Court of Chancery bar ought to be—as here they are—mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities, running their goat-hair and horsehair warded heads against walls of words, and making a pretence of equity with serious faces, as players might. On such an afternoon, the various solicitors in the cause, some two or three of whom have inherited it from their fathers, who made a fortune by it, ought to be—as are they not?—ranged in a line, in a long matted well (but you might look in vain for Truth at the bottom of it), between the registrar's red table and the silk gowns, with bills, cross-bills, answers, rejoinders, injunctions, affidavits, issues, references to masters, masters' reports, mountains of costly nonsense, piled before them. Well may the court be dim, with wasting candles here and there; well may the fog hang heavy in it, as if it would never get out; well may the stained glass windows lose their color, and admit no light of day into the place; well may the uninitiated from the streets, who peep in through the glass panes in the door, be deterred from entrance by its owlish aspect, and by the drawl lan-

guidly echoing to the roof from the padded dais where the Lord High Chancellor looks into the lantern that has no light in it, and where the attendants' wigs are all stuck in a fog-bank! This is the Court of Chancery; which has its decaying houses and its blighted lands in every shire; which has its worn-out lunatic in every madhouse, and its dead in every church-yard; which has its ruined suitor, with his slipshod heels and threadbare dress, borrowing and begging through the round of every man's acquaintance; which gives to monied might the means abundantly of wearying out the right; which so exhausts finances, patience, courage, hope; so overthrows the brain and breaks the heart; that there is not an honorable man among its practitioners, who would not give—who does not often give—he warning, 'Suffer any wrong that can be done you, rather than come here!'"

In a preface to the first permanent edition of "Bleak House," he reaffirms the characterization in the following terms:

"A few months ago, on a public occasion, a Chancery Judge had the kindness to inform me, as one of a company of some hundred and fifty men and women not labouring under any suspicions of lunacy, that the Court of Chancery, though the shining subject of much popular prejudice (at which point I thought the Judge's eye had a cast in my direction), was almost immaculate. There had been, he admitted, a trivial blemish or so in its rate of progress, but this was exaggerated, and had been entirely owing to the 'parsimony of the public'; which guilty public, it appeared, had been until lately bent in the most determined manner on by no means enlarging the number of Chancery Judges appointed—I believe by Richard the Second, but any other king will do as well.

"This seemed to me too profound a joke to be inserted in the body of this book, or I should have restored it to Conversation Kenge or to Mr. Vholes, with one or other of whom I think it must have originated.

"But as it is wholesome that the parsimonious public should

know what has been doing, and still is doing, in this connection, I mention here that everything set forth in these pages concerning the Court of Chancery is substantially true, and within the truth."

At the time of this violent characterization of the High Court of Chancery and the Chancellor, the wool-sack was occupied by Lord St. Leonards, better known as Sir Edward Sugden, who, it is true, regarded proposed reforms in Chancery in conservative spirit, but who may live as a great benefactor of mankind, in the direction of clarifying the law, when the memory of Dickens will be only a tradition.

In 1873 the first Judicature Act was passed, which, with its amendments, secured to England the most enlightened, intelligent, and efficient administration of civil justice ever known. If, nevertheless, any one imagines that this means that any one who runs may read, or that it encourages laxity in legal training and education, which features represent the *summum bonum* of legal reform as too largely understood, he is fundamentally mistaken. In order that the barristers, proctors, solicitors, attorneys, and other attendants on the various Divisions of the Supreme Court of Judicature of England, may be so equipped as to assist in the efficient, prompt, and simple working of the existing English system of civil law, the Bar there is given annually two volumes, known as "The Annual Practice," containing for 1895 over nineteen hundred pages of solid, closely printed, octavo matter. Of course, each year's publication is based on that of the previous year. A thorough knowledge of what is therein set out would require more exhaustive study and practical experience than the mastery of all the details of "Daniell's Chancery Practice," with the whole system of the English common-law pleading and procedure as found in all the works of Chitty. One great obstacle in the way of true legal and judicial reform is the popular notion that it exists in bringing down the administration of

the law to the standpoint of the ignorant and the inexperienced; while as to all other pursuits where any analogy can be found, whether professional or scientific, or in the fields of literature or the arts, it is thoroughly understood, that only those of the highest training and experience can manage with success the instrumentalities, physical or otherwise, adapted to produce powerful and rapid results with the greatest simplicity of action.

The great leaders in the accomplishment of this reform in England were drawn from the legal profession. They begin with Sir Samuel Romilly in the early part of the century, and close with Lord Cairns and Lord Selbourne, with the intervals in large part occupied by Chief Justice Campbell, afterwards Lord Chancellor, Brougham, Lyndhurst, Bethell, afterwards Lord Westbury, and Lord Justice Turner.

Any one who properly estimates the practical difficulties in the way of securing legal reforms in the United States, and the even greater difficulties of maintaining reforms once secured, and of preventing the growth of new abuses not before anticipated, will find deep interest in the study of the history of the struggle, of which the later period covers the half century intervening between the appointment of the first parliamentary commission and the accomplishment of the beneficial results by the legislation commonly known as the Judicature Acts. Especially it is to be noted that, though the public is occasionally stirred in behalf of such reform, its excitement is fitful, while legislators and statesmen who lead in other directions entirely eclipse those who lead in this. Campbell, who was persistent as a reformer, and who marked in that way his first entrance into the House of Commons, writes his brother in 1831 as follows:

"'I am going to move to bring in some bills for the amendment of the law. I shall get no one to listen to me, and shall say very little'; and the next day he adds, 'I got off well last night with my bills, and was complimented by Peel, and ex-

travagantly by O'Connell. However, as might be expected, the newspapers hardly mentioned such an unpopular subject."

In this connection it is worth noting that many periods in the correspondence, often of a merry nature, between Campbell on one side and Lyndhurst or Brougham on the other, were marked with references to proposed amendments of the law. Among the rest I find the following letter from Lyndhurst:

"COWES, September 5, 1859.

MY DEAR LORD CHANCELLOR:—'Here's to the pilot that weathered the storm,'—for I distinctly found a storm brewing —but you have pursued Franklin's advice and poured oil on the troubled waters—*ponto unda recumbit.* Have you forgotten the lecture read by King William IV of glorious memory (I say of glorious memory, because he was the distinguished patron of the Reform Bill of 1830), the lecture to Lord Brougham for his irregular conduct in taking the great seal to Scotland? You appear to have followed the precedent, but without much fear of the lecture being repeated under a wiser rule. I am wondering when your grand commission of all the living authorities on Chancery Reform is likely to commence its real business. I am unfortunately getting every day more lame and more inefficient. You must lay in a capital stock of health in your native air, for you will have no light work when parliament meets and Lord John Russell fires off his blunderbuss. If it should burst in his hands! Excuse my nonsense, for I am very idle.

Faithfully yours,

LYNDHURST."

I also find the following from Brougham, referring to the same commission:

"BROUGHAM, October 18, 1859.

MY DEAR CHANCELLOR:—I have just got your kind letter of yesterday, and let me beg and intreat that you would insert Napier's name in the Commission, and so make the inquiry extend

to Ireland. It is inconceivable how much importance is attached to their being included in anything which is done with respect to England, and though in some things, as the Divorce Court, there may be reasons against it, in this of taking evidence in Equity there can be none.

I saw in the papers your having taken to the turf in your old age. Whether Jem Parke, besides seducing you, profited by doing you in a bet, I can only conjecture.

Many felicitations to Lady Stratheden and the rest of the family on the Duckworth marriage, which was only *in fieri* when I last wrote, but has since been executed.

Yours ever truly,

H. BROUGHAM."

I stop the course of my discussion to say that at that time Campbell, as Chancellor, had the official duty of appointing the new Commission on Chancery Reform, lately authorized by parliament, and that at the date of Brougham's letter Campbell was a month and five days past the eightieth anniversary of his birth, having been born almost within the sound of the guns of Paul Jones, whom he denominates a pirate, and who was then invading, with destructive activity the Firth of Forth and its shores. Lyndhurst was then seven years the senior of Campbell, and Brougham one year, and yet each wrote with all the spirit, vivacity, and interest in the events of the day, of men who have not reached the middle of life. With the rest, each maintained a lively zeal in the subject matter which I am bringing to your attention.

Likewise, Sir Samuel Romilly, the early apostle in the cause of legal reform, found legislative difficulties, part of the family, whose name is legion, born from the inability to maintain a uniform, persistent public interest, and from the indisposition of legislators to walk in such humble paths when others more brilliant lead by much less labor to more ambitious results.

However, the zeal and persistency, particularly of the

great legal luminaries whom I have named, carried on the struggle, and after a lapse of more than two generations the result which I have spoken of was accomplished. I do not trouble you with the details, which are matters of history, but I indicate generally this outline for the sole purpose of impressing upon you that nothing substantial in the direction of the reform of the law can be accomplished without the earnest, persistent, protracted, thoughtful, and intelligent assistance of the members of the legal profession.

I do not intend to have it inferred from anything that I have said, or may say, that the profession of the law in England, taken as a mass, is in any particular in advance of the profession in the United States, taken also in the entirety of its mass. But the new system, which culminated in the Judicature Acts, and which was very radical, and gave the courts an extraordinary power of legislation with reference to all details of pleading and procedure, could hardly have met with such practical success in the United States as it did in England. Its establishment required the enactment of a mass of orders and rules to an extent unknown to any judicial tribunal with us, an entire code of forms, even more numerous than any which has accumulated in the United States under any common-law system of pleading, practice, and procedure, or under any other. The whole body and detail of this work were built up with marvelous clearness and precision, as well as simplicity and brevity. Pleadings were relieved of every word of which it was possible to purge them; and the first requirement of Order 19, of the rules of the Supreme Court, relating to this department of the law, provided that every pleading should contain, "and contain only," a statement in a summary form of the material facts. Forms were drawn out accompanying the rules to which I have referred, but it is not understood that these precise forms are indispensable.

I read you three of the prescribed forms for declarations, or, as technically called under the English practice, state-

ments of claims, in proceedings touching common-law rights, the first of which corresponds to the action of trover with us, the second to the action of negligence, and the third to a writ of entry:

"Conversion of goods.

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil by refusing to give them up on demand (*or*, throwing them overboard out of a boat in the London Docks, etc.)

(If any special damage is claimed, add—)

Particulars, *(fill them in)*.

The plaintiff claims £100.

Place of trial, London."

"Negligent driving.

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1882, negligently driving a cart and horse in Fleet Street.

Particulars of expenses, etc.	£	s.	d.
Charges of Mr. Smith, surgeon	10	10	0
Charges of Mr. Jones, coachmaker	14	5	6
	24	15	6

The plaintiff claims £150.

Place of trial, London."

"Heirs-at-law against strangers.

The plaintiff is entitled to the possession of Blackacre, in the parish of (*or*, of No. 2, Bridge Street, Bristol,) in the county of

2. On and before the of 188 , A. B. was seized in fee and in possession of the premises.

3. On the day of , 188 , the said A. B. died so seized, whereupon—

4. The estate descended to the plaintiff, his eldest son and heir-at-law.
5. After the death of the said A. B. the defendant wrongfully took possession of the premises.

The plaintiff claims:

1. Possession of the premises.
2. Mesne Profits from the day of

Place of trial ——."

I will also read you two statements of claims according to the prescribed forms for relief in actions specially assigned to the Chancery Division, and corresponding to that afforded with us on the equity side of the court. The first is a proceeding for winding up a partnership, and the second for specific performance.

"Dissolution of partnership.

1. The plaintiff on December 20th, 1875, entered into partnership articles with the defendant for ten years.
2. The defendant has broken the partnership articles as follows:—
   a.
   b.
   c.

The plaintiff claims:—

1. Dissolution.
2. Accounts and inquiries.
3. A receiver and manager."

"Specific performance.

1. By an agreement (*or* letters) dated (*or* made verbally at inverviews on or about) the day of , the plaintiff agreed to sell to the defendant the Home Farm, Kent, for £ . The sale was to be completed on the of ,

(*If the agreemeut was verbal, add—*)

2. The agreement so entered into has been part performed as follows: *(state how)*

The plaintiff claims specific performance of the above agreement and that the defendant may be ordered to execute a proper conveyance of the premises to the plaintiff *(stating in each case what the defendant is required specifically to do)*."

While in one sense the prescribed forms reject precedents and the common law, yet they are the developments of a modified system, which, beginning as early as 1831, had been authorized and established by statutes and rules prior to the Judicature Act of 1873; and they make general use of the expressions known to the ancient pleadings, and were thus safely guided into accuracy of statement. In this respect the result differs essentially from the pleadings so frequent in those parts of the United States where the common-law forms have been rejected, and where the phrasing in each particular case is largely evolved from the brain of the legal gentleman who prosecutes or defends, so that, no matter what his ability and experience, the uncertainty follows which is so often inherent in novelty of expression. The popular impression in this particular, with reference not only to civil pleadings but even to those used in criminal prosecutions, an impression too largely shared in by the legal profession, would disclose the fatal error which it involves on comparison with any other of the arts or sciences, whether or not closely analogous to the law. How quickly would even the clerical profession be involved in confusion, and more especially the medical, if its nomenclature was suddenly destroyed by legislation, and each individual assumed to express himself in words of his own invention or selection touching all matters having special reference to his pursuit! And what a new Tower of Babel we should have if the like were done with architecture, mathematics, or chemistry, or with any of the sciences or arts where

nicety and certainty of investigation or accomplishment are desired!

The last generation developed in England an exceptionally large proportion of the legal profession, and of the judiciary, endowed with large experience and strong common sense. The working out of the scheme provided by the Judicature Act of 1873 fell into the hands of such men as Sir Roundell Palmer, afterwards Earl Selbourne, Earl Cairns, Chief Justice Cockburn, Lord Romilly, Sir Robert Phillimore, Blackburn, Sir James Hannen, and many others known on both sides of the Atlantic for their strong fibre and mental muscle. In addition, under the English system the legal light of the country is concentrated at one spot, London. And what further marked the capability of dealing successfully with the Judicature Acts is the division of labor in the profession itself, as between attorneys, solicitors, special pleaders, conveyancers, draughtsmen, barristers attached to the Chancery Division, barristers attached to the Common Law Division, and the group at Doctors' Commons who followed the Ecclesiastical, Probate, and Admiralty Divisions. It was in part due to the consequent special training, and in part to the fact that costs are taxed in the main as though between client and lawyer, that it is so rare questions of evidence, pleading, practice, or procedure come up on appeal. The marked division between attorneys or solicitors on the one side and counsel on the other has a striking tendency in this direction. The client is separated from him who ultimately determines the course of litigation, leaving him free from partisanship and in possession of a quasi-judicial temperament. A singular fact, illustrating the practical result of all these special causes which made a success of the Judicature Acts in England, appears from an enumeration of the suits reported in the second part of the advance sheets of volume 160 of the United States Supreme Court Reports. In all they number nineteen, of which ten touch questions of jurisdiction. I took up hap-

hazard the volume of Appeal Cases for 1894, so far as it covers the decisions of the House of Lords, and found reported no case involving a question of evidence, one only of practice, and this one of great importance, and one only turning on questions of jurisdiction, and this properly one of international law and not of jurisdiction as between different local courts. To be sure, the same volume shows a number of practice cases disposed of by the Judicial Committee of the Privy Council, but these came from all parts of the British empire wherever the sun shines, except Great Britain herself, and may well be said to represent the double of the scattered and broken condition of the profession in the United States, and our multifarious legislation, and not the profession and legislation in England concentrated in the way which I have pointed out. I do not now express any opinion which condition is on the whole the better, and I only make the comparison as a fact which needs to be studied in any attempt to adjust intelligently the means to the end.

The code, in the strict sense known to the civil law, cannot have an effectual existence with us so long as we have a government of laws and not of men, whereby precedents will necessarily adhere to any legislative body of statutes, while the facts of comparative legal anatomy to which I draw attention render it doubtful whether reform with us, so far as it depends on statutes, must not for the most part be developed by gradual legislative growth, and they also render it certain that it must find its soil in something deeper than mere legislation.

Turning to the United States, the legal profession is constantly warned that, in the public estimation, proceedings on the civil side of the courts are far too dilatory, and far too uncertain in results. With reference to the criminal side of the law, the warnings are of more fearful character, shown by the lynchings so frequent in so many localities. The following, contained in the opinion read by Mr. Justice

Brewer, in behalf of the Supreme Court of the United States, in the Debs case, seems almost to despair of the efficacy of any system for the suppressing of crime which is practicable under the provisions of our various constitutions, federal and state. He said:

"As, under the constitution, power over interstate commerce and the transportation of the mails is vested in the national government, and congress by virtue of such grant has assumed actual and direct control, it follows that the national government may prevent any unlawful and forcible interference therewith. But how shall this be accomplished? Doubtless, it is within the competency of congress to prescribe by legislation that any interference with these matters shall be offences against the United States, and prosecuted and punished by indictment in the proper courts. But is that the only remedy? Have the vast interests of the nation in interstate commerce, and in the transportation of the mails, no other protection than lies in the possible punishment of those who interfere with it? To ask the question is to answer it. By article 3, section 2, clause 3 of the federal constitution, it is provided: "The trial of all crimes except in cases of impeachment shall be by jury; and such trial shall be held in the state where the said crime shall have been commmitted." If all the inhabitants of a state, or even a great body of them, should combine to obstruct interstate commerce or the transportation of the mails, prosecutions for such offences held in such a community would be doomed in advance to failure. And if the certainty of such failure was known, and the national government had no other way to enforce the freedom of interstate commerce and the transportation of the mails than by prosecution and punishment for interference therewith, the whole interests of the nation in these respects would be at the absolute mercy of a portion of the inhabitants of that single state."

Yet all the evils which these words suggest have existed wherever the fundamental principles of the common law, as we now understand them, have existed, and at times to

an extent more pronounced than anything now suggested by them. The right of trial by a jury of the vicinage was one of the great rights for which our fathers hazarded their fortunes and their lives, and the violation of it was denounced by those who denounced the Star Chamber in England, and by the Declaration of Independence. Moreover, in England the modern state of the law, in firmly maintaining the right of trial by jury in criminal causes, is represented by the following in Chitty's Practice:

"It should seem that the principles upon which injunctions are in general granted, would apply even more strongly to prevent the commission of crimes, the law for preventions of crimes being even preferable to those of punishment. But, nevertheless, the general rule is, that courts of equity will not interfere to prevent the commission of any crime, excepting to restrain a libel upon an infant (who is under the peculiar protection of a court of equity) and excepting such cases of public nuisances as are more particularly injurious to particular individuals in the neighborhood, and also constitute private injuries."

In fact, our fundamental theories of criminal prosecutions, from the incipiency which ripened into our independence as states, and the same present theories in England, involve the incidental evils pointed out by Mr. Justice Brewer, but rely on the slow operation of the popular mind to afford a more lasting and beneficent remedy than could be found in the action of any chancellor, or other judicial officer, no matter how prompt and efficient the same might be in any particular case. And with us, and wherever popular government exists, it is essential to legal reform, so far as it concerns criminal prosecutions, that we should be more and more imbued with love of our institutions and with reverence for them, with a thorough understanding and affection for the principles upon which our fathers built them, and with an abiding faith in their success in the main, notwithstanding the evils arising from delays and defaults in prosecutions in particular instances.

We are frequently pointed to the methods of the criminal law in France, with the claim that they are so efficient that their leading features should be adopted by us, although they contravene the traditions in favor of personal liberty and the impartial action of the courts on which our institutions so largely rest. In 1802, Sir Samuel Romilly described criminal proceedings which he witnessed in a French tribunal, as follows:

"After every witness was examined, an examination took place of the prisoners by the judges. This would have much shocked most Englishmen, who have very superstitious notions of the rights and privileges of the persons accused of crimes. It should seem, however, if the great object of all trials be to discover the truth, to punish the guilty, and to afford security to the innocent, that the examination of the accused is the most important, and an indispensable part of every trial. I observed one objection to it, however; which is, that the judges often endeavor to show their ability and to gain the admiration of the audience by their mode of cross examining the prisoners. This necessarily makes them, as it were, parties, and gives them an interest to convict. They become advocates against the prisoners; a prisoner who should foil the judge by his mode of answering his questions, particularly if by that means he should raise a laugh from the audience, would have little chance of obtaining a judgment from him in his favor."

Romilly looked at this through the eyes of a chancery lawyer, but what he wrote carried within it its own condemnation. Moreover, his next paragraph, in reference to the guillotine and the great crowd of persons, principally women, which he describes as assembled about it, and the terrible scenes of cruelty which this reference brings to the mind of every one in any degree familiar with the history of France, either in the last century or in this, form a better condemnation of the French system of judicial administration of the criminal law than any lengthy comments touching it. In the case which not long since occurred at

Fall River so well known to all of you, according to the general understanding, whether correct or not I do not undertake to say, the supposed criminal was subjected to a protracted examination, very much akin to that common to the French courts; and, whatever otherwise might have been the sense of the community, the Anglo-Saxon sentiment was found to be so deeply rooted as to cause a revolt in favor of the person charged. A recalling of the details of this case will satisfy us, that, however impatient Anglo-Saxon communities may become of the delays or defaults of the criminal law in particular instances, or at particular times, they will need to be educated anew before they accept permanently any system which violates their own traditions.

Passing by this, it is beyond the province of this paper to attempt to suggest particular propositions for the reform of the law. It is rarely that any great progressive movement comes as though worked out at a single blow. Reforms are more frequently accomplished by constancy, and, indeed, they are oftentimes not less difficult in their accomplishment than in their security thereafter. I will, therefore, only undertake to call your attention to some general considerations applicable wherever reforms of the English common law may be attempted.

First of all, certain constitutional provisions which have deep roots in our governmental system, to only one of which I will refer, render it impracticable to work in certain directions with the same facility as the reformers have done in England. Whether or not this is for the ultimate public advantage cannot yet be ascertained by what we can see of the future, so that we must yet rest on the experience of the past. The apparent strictness with which the rules of criminal pleadings are applied, comes in for much general and indiscriminate censure, and is charged with a large proportion of the defaults in the administration of justice. The probability is that, in the majority of the instances commented on, the fault is in the ignorance

and inexperience of the prosecuting officers whom the political powers of certain localities prefer to select to represent them, and not in the system or the courts. Indeed, it must be admitted that no inconsiderable portion of the uncertainty attached to criminal proceedings, of which complaint is made, has arisen from the anxiety of the courts to relieve important cases against inadvertencies, thus furnishing illustrations of the saying so often heard, that "hard cases make shipwreck of the law."

However this may be, all of our constitutions require that whoever may be charged with an offence shall be properly informed of the accusation against him. The present learned attorney general of Massachusetts, Mr. Knowlton, in his last annual report, has commented on these constitutional provisions, and the embarrassment which they are supposed to cause to the administration of criminal law, and has cited with satisfaction a judicial expression that they require only such particularity of allegation as may be of service to the prisoner in enabling him to understand the charge and prepare his defence. This, however, seems rather stating the difficulty than solving it, in illustration of which may be told the anecdote, I think from *The Green Bag*, of a certain Mary O'— who was found drunk in the street. "What plea do you want to enter, Mary?" said the judge. "Well, yer honor," said Mary, "I'll not be pl'ading at all to the charge; it's too gineral. It do n't say what strate." If this had been a case of novel impression, it may be that Mary O'— would have puzzled the court with the glimpse of the constitution which she gave.

In addition to these constitutional principles, there have been certain precedents, including precise forms of expression, some of them highly technical, in use for so long a period that they have come to have more or less the force of law. Some of them are undoubtedly the relics of what was once essential, but now unessential. Others, perhaps, were the mere fashion of the times, repeated so often that they are

now in the mouths of every pleader. Some of them, to the well-trained legal mind, seem to be unnecessary, the omission of which ought not to prejudice anyone; yet, in view of the fact that ours is a government of laws, and not of men, and of the further fact that when the courts pull away from well-known landmarks they enter a field where their only guides are the fluctuating and crude opinions of different judges, they ought, ordinarily, to adhere to these forms, precedents and expressions until common consent is united against them, or the legislature has expressly interfered.

Yet the fact is, with reference to the great classes of offences known to the common law, and statutory offences of analogous kinds, that there are precedents whose authority is always unquestioned, giving forms and expressions which a diligent, competent, and experienced prosecuting officer uses with entire safety. The difficulties of pleading new statutory offences come mainly from lack of clearness in statutory enactments, and the consequent uncertainty what elements make up the substance of the crime. With reference to new offences, the field is necessarily one of experiment, but, unless the statute is itself doubtful or obscure, it rarely yields an unsuccessful result in the hands of prosecuting officers who ought to be entrusted with matters of that character.

Here again the division of professional labor, so common in England, comes in with its suggestions. It is unreasonable to expect that a local prosecuting officer, in some small, remote county where offences are rare, and almost wholly of trivial and commonplace character, or that a federal prosecuting officer, in a district where for a series of years the demands of the criminal business are not sufficient to keep his faculties alive in that direction, should be prepared, on call, to jump successfully into some great cause, based on some new and doubtful provision of law, surrounded by strange and complicated conditions of fact, and antagonized

by lawyers of great ability who find more profit in laboring for individual clients than for the public. In England, a case of that nature would receive the attention of the director of prosecutions for all England, and would probably involve the passing of a brief to the attorney general, selected from the head of his profession, drawing an annual official compensation of approximately twelve thousand pounds, with, so far as needed, the assistance of the solicitor general, also drawing an annual compensation of approximately ten thousand pounds.

If such prosecutions fail, it is to be charged less against the law and the courts than against the indisposition of the people to secure for the public service the best professional assistance, stationed at the centre, ready to aid in extraordinary cases arising wherever they may arise. This suggests the explanation of one great source of difficulties with the administration alike of the civil and criminal law. We have all been taught, in a certain sense, that every man, with a little adaptation, can fill almost any public position, and the result of this has been to accustom the public mind to be satisfied with a certain mediocrity. In addition thereto there is an undoubted restlessness, like that which drove to his exile Aristides the Just, which, with limitations and exceptions, disinclines the popular impulses to hold a long time in public positions men of admitted superiority. Beyond this, and more powerful than this, is a jealousy of anything approaching an official aristocracy, composed of persons who are enabled by large salaries to maintain a condition of life apparently above that of the average householder of the community.

The result affords a striking contrast, marked by the compensations received by the attorney general and the solicitor general of Great Britain, which I have already stated, as against eight thousand dollars paid the attorney general of the United States, and seven thousand dollars paid the solicitor general, and, more emphatically, by the

fifty thousand dollars paid annually to the chancellor, the forty thousand dollars to the lord chief justice, the thirty thousand dollars to each of the lords of appeal and the master of the rolls, and the twenty-five thousand dollars to each of the justices of the high court, as against the well-known compensation received by judicial officers in the United States of like rank. Indeed, aside from some local salaries in the county of New York, the lord chancellor's secretary, the chief clerks in the chancery, the registrars, the taxing-masters, the paymaster-general, and other subordinates of the High Court of Justice in England, are paid on the same basis as our best remunerated judicial offices, federal or state.

It is folly to concede anything in behalf of this popular drift, for the laborer is always worthy of his hire; and if the people, who, above all private individuals and corporations, have the resources to compensate for ability and experience, will refuse to do so, it is inevitable that the public interests must always be contending against great odds in judicial tribunals, as well as elsewhere. I think it does not exaggerate to say that a suitable scale of compensation, backed also by traditions like those existing in England, which, for the most part, select judicial officers from the leaders of the profession, and backed also by the system which there gives the judges full clerical assistance, and other assistance in accordance with modern methods, would in time make practicable a large comparative reduction of the judicial force in the United States, thus diminishing to a corresponding degree the uncertainties of the law, and the delays and defaults of justice of which uncertainty is the great mother. I am aware that not all the judges in England are drawn from the most active side of the profession, and that some of them were, before their promotion, eminent mainly as students of the law, and yet have added lustre to the bench; but these are the exceptions which prove that to the successful coöperation of a considerable

body of human beings, engaged in working out a common result, variety of characteristics, of tastes, of training, and of experience is necessary.

Other difficulties of a very serious nature, but akin to those of which I have last spoken, and leading directly to the multiplication of inferior tribunals and of inexperienced judges and prosecuting officers, come from that indifference of the community to its larger necessities, which permits local and minor interests to break up the administration of justice through the establishment of numerous small counties, and of other small judicial districts. I will not take time to dwell on the evils necessarily involved in this. It is sufficient to say, that if the concentration of legal ability about the courts in London increases light, the severing it into small fractions creates obscurity and confusion. Probably no single element has contributed, without attracting public attention, so much to the weakening of the judicial system, and of its proper operation, as the establishment of so many small centers, where the superior courts are held so rarely, and where the section of the resident legal profession is necessarily so small, and so unaccustomed to witness the great and important affairs of the law. I will not dwell on the scenes in these weak and feeble counties, so abhorrent, not only to the lawyer as a lawyer, but to all who detest the "coddling" of judicial proceedings, especially jury trials, by local influence, in the obscure corners of an obscure shire-town. Neither is the picture relieved by exceptional instances which may, on the instant, be cited to refute my proposition; but its lines are in fact sharpened by them.

I have already referred to the difficulty of preventing the growth of new abuses not before anticipated. These spring mainly from the voluminous legislation which is so often said to be the curse of our country, but which, after all, represents its revivifying and renovating spirit, and which, taken at its tide by the persistent and combined influence of our better thought, should result in more good

than evil. To this, undoubtedly, must be attributed the mass of litigation of which the ten jurisdictional questions in one part of one volume of the reports of the United States Supreme Court, already referred to by me, are an example. A careless expression in a statute is sometimes fruitful of litigation which fills pages of decisions.

Perhaps, after all, the direction in which the legal profession, and each member of it, can make his work in behalf of reform the most effectual, is in promoting legal education, meaning to include in this the education preliminary to the study of law. The questions involved in this branch of my topic are receiving large discussion both in the United States and England, and its subject matter is in a formative condition. One great question, of course, is between the schools of law on the one side, and the office on the other. Whatever may be said in favor of the schools, and although I thoroughly appreciate the advantages which come from the common attrition of many minds, and the consequent mental awakening and girding up, and the further consequent diminution of slovenly methods and habits, so that I, therefore, earnestly advocate that every student of the law shall take his turn in them, yet I think the office of an active and honorable practitioner, in the neighborhood of a variety of courts, and the persistent and quiet study of certain great text-books, are the true places and sources of instruction. I mean that part of one's instruction which must necessarily intermingle with all other teaching in order to give the student a clear and true apprehension of the principles which should guide him in his profession.

Lord Campbell read law in the office of William Tidd, the special pleader, who has given the profession one of the most clear, concise, and accurate treatises the English language has ever seen. Among the other students of that office, though not all contemporaneous with Campbell, were Lord Chief Justice Denman, Lord Lyndhurst, and Lord Cottenham. The picture which Campbell draws of

it is largely like those with which many living practitioners, including myself, were familiar in student days; perhaps a dozen students in all, some of them passing in the office only an hour or two occasionally, breaking up the study of the law by discussions of "Mrs. Jordan in Miranda," the races, and other equally interesting, but distracting, topics. Tidd, he says, paid but little attention to his students, merely, as he passed into his own room, saying: "How d'ye do"; and yet Campbell adds: "His office, however, for a man really desirous and determined to improve himself, is in my mind by far the best in London; you see here such a quantity and such a variety of business that you may learn more in six months than by reading or hearing lectures for seven years."

Passing by this, there come the other questions of the preliminary education, and of the character of the law schools themselves. Except in the State of New York, I am not aware that in any portion of the United States any special preliminary education is required. In England all that is now demanded is an examination in the English language, the Latin language and English history, and the samples of the examinations which I find indicate that they are of the most superficial and unimportant character. In France no person can reach the higher grade of the law, that of avocat, unless he has taken the degree of bachelor of letters, which means, of course, a knowledge of the humanities; and in Germany, the student requires as preliminary to his legal education a certificate of proficiency in classical and modern literature, and in mathematics. So far as I am aware, the only solid requirements are those of France and Germany. There are exceptions to all rules, and each of you can recall notable instances where gentlemen of the Bar have risen to the highest stations, professional and otherwise, and, indeed, to such heights that they seem to have become necessary to the life of the nation, without the advantages of an early training. But the or-

dinary, average man who pursues the law cannot properly grasp its principles, and even its details (for to grasp and digest details successfully requires powers as well disciplined as to grasp principles) unless he has first received that broad and generous training necessary to entrance upon any special pursuit, whether it be law, medicine, or any other involving a large use of the mental faculties. Without this preliminary training, the average student of the law stumbles, and, after he enters the practice of his profession, he continues to stumble.

Although I regard this branch of my discussion as involving the elements most essential to true legal and judicial reforms, I will not undertake to enlarge on the various classes of schools of the law, the improvements which have been made in them, and the improvements which should be made in them. All this has lately received in this country and in England a thorough discussion by master minds, Professor Thayer, and the Lord Chief Justice, Lord Russell of Killowen. I can refer the inquiring mind to what they have said as sufficiently opening up the topic. The Lord Chief Justice states that the past history of legal education at the Inns of Court is subject to the gravest charges. He also admits the improvement which they have made, but he claims that they have not yet acted up to "the full measure of their opportunity and their responsibility." He, also, apparently admits that legal education in the United States through the schools is in advance of that in England. He urges in substance, as the crowning glory, the establishment of a university of the law, to have all the resources, powers, and authority which are had by the greater universities in the various departments of literature, the sciences, and the arts.

I will conclude what I have said, in a disconnected way, although I hope not without some advantage, by reaffirming that the reform of the law, including its pleadings and practice, and its effective and just operation in every direc-

tion, and, I may add, the reform of the Bench, so far as each need reform, depend in the most part on the legal profession; and that without the persistent and devoted efforts of that profession in that behalf, not only in suggesting useful amendments of what exists, but in maintaining reforms when secured, and especially in preventing crude legislation in their name all progress will be apparent, and not real. I think, also, that I have shown in the general suggestions which I have made, that no lawyer can properly excuse himself by the claim that he is powerless alone and that he must wait for the legislature and the courts, because I have exhibited to you fields in which every earnest man may work of himself for successful accomplishment, be it greater or less, in one direction or another; and, moreover, the fields of professional ethics and honorable example are always open to each individual. I can best conclude with an extract from one of Sir Samuel Romilly's parliamentary speeches:

"It is not from light motives that I have presumed to recommend an alteration in a matter so important as the criminal law of the land. I have always thought that it was the duty of every man to use the means which he possessed for the purpose of advancing the well-being of his fellow creatures; and I am not aware of any way in which I can advance that well-being so effectually as by adopting the course which I now pursue. Lord Coke used to say that he considered every man who was successful in his profession as under an obligation to benefit society; and the works which that great and learned man produced, after a life of labor in the high situation in which he was placed, were his mode of paying the social debt. So, for myself, my success and my good fortune in my profession have laid me under a debt to the society amongst whom I live; and the way in which I intend to discharge that obligation is by endeavoring to meliorate the law, and thus to increase the security and happiness of my country."

BIOGRAPHIES.

GEORGE A. BINGHAM.

BY CHARLES H. BURNS, OF WILTON.

I have known George A. Bingham as lawyer, judge, and friend for twenty-five years. Sometimes it is well in order to accurately describe an individual, to first see what he was not, in order that we may the more clearly discern what he was.

Judge Bingham was not a ready man, he was not a wit, he did not possess facility or felicity of speech; but he was strong physically and mentally. He had a tremendous grip, a rugged energy, and marvellous industry. He was a thorough student of the law. He rarely if ever left a question, however simple or intricate, without going to the bottom, and mastering it in its every detail. I was with him in some important cases. I shall never forget a visit he made me once at my office in Nashua, when he remained in the city two weeks, working day and night in the preparation of a difficult case. I must confess I was relieved when he went away, as it gave me the first opportunity I had had, for fourteen days, of obtaining any substantial rest.

He liked his profession. He did not feel, as a celebrated lawyer once described, as if he was in the "gall of bitterness and bonds of iniquity." He considered that he was engaged in one of the noblest, most inspiriting and independent of all the vocations which engage the attention of mankind.

He was a man of high character as well as great legal attainments. This is the ideal essential in a judge. Phillips said,—"the importance of an idea depends upon the man behind it," and that is true. The importance of the deci-

sion of a court depends upon the character of the tribunal making it.

He was thoroughly equipped for the bench; was twice appointed, serving with distinction each time, and retiring each time voluntarily. He did not forget his law when made a judge. At the banquet given on the one hundredth anniversary of the establishment of the supreme court of the United States, in New York city, a few years since, at which there were a thousand lawyers present, Joseph Choate began his after-dinner speech by saying, "we are all lawyers, *except* the *judges*." Judge Bingham continued to be, while on the bench, the same persistent student that he was while in the practice of the law. He believed with Paul, that the "law is good, if it is used lawfully." He did his part fearlessly toward seeing that the law was used lawfully.

He was one of the best trial justices I have ever known; patient, conscientious, kind; and, what is of the highest consequence in a judge, honest. But he was something more than a learned and successful lawyer: he was something more than an able and upright judge; he was a good citizen; he was true to his home; a faithful husband; a kind and considerate father, and a true and steadfast friend.

Engd by Geo E. Perine N York

S. L. Bowers

SHEPARD L. BOWERS.

BY ALBERT S. WAIT OF NEWPORT.

The Hon. Shepard L. Bowers was the son of James and Nancy (Symonds) Bowers, and was born in the village of South Acworth, on the 13th day of December, A. D. 1827.

He was employed until adult age on his father's farm, at intervals attending school, first at Hancock, and afterwards at the Kimball Union Academy, and at Thetford, Vt. Becoming fitted for college, he entered at Dartmouth in 1852, but, being anxious, in view of the years he had then attained, to enter upon business, he left in about one year, without graduating. He was much of his time after reaching manhood engaged in teaching, first, in his native town of Acworth, and subsequently in Leominster and Fitchburg, Mass. Entering as a student the law office of the Hon. Asa Fowler of Concord, after the required term of study he was admitted to the bar in 1856, and immediately entered upon the practice of the profession, at Newport, first in partnership with the Hon. Levi W. Barton, and after that connection was dissolved pursued it by himself.

From the first, Brother Bowers evinced an earnestness in the work and responsibilities of his chosen calling, which, with fidelity to his clients' interests, and a geniality of manner which uniformly marked his character, soon won for him the favor of the community, and insured him an amount of business sufficient to realize the hopes of most young men starting in the profession.

In 1860 he was appointed register of probate for Sullivan county, and held the office continuously for ten years. He

was again appointed to the same office in 1876, and continued to hold it, first by appointment, and after the change of the law, by election, until 1882. In 1886 he was appointed solicitor for the county, and held that office till 1890. He was elected to represent his town of Newport in the general court of the state in 1866, and again in 1885, and both years was an active and useful member of that body, in the latter year serving as chairman of the committee for revision of the statutes of the session. In 1893 he was elected to the state senate, and served in that branch of the legislature with distinction, being chairman of the judiciary committee, and often participating in the debates of the session. He was a member of the Republican national convention at Baltimore in 1864, which made the second nomination of Lincoln for the presidency, and was chosen alternate to the Republican Chicago convention of 1884; and he was an active participant in political affairs, of both the state and nation, throughout the whole active period of his life.

In the educational, and also in all the business and social, affairs of his town Brother Bowers was always active and often foremost, aiding and encouraging whatever tended to its prosperity and growth, many years serving upon its school committee and board of education, and being efficient in all the movements for the advancement of the public and business interests.

He was a sincere and consistent member of the Congregational church, walking uprightly according to its enlightened faith. His last work was during the early part of the trial term of the supreme court for the county in October, 1894. In evidently failing health he commenced the business of the term with impaired vigor, and, although he held out through the trial of an important cause, at its close his exhausted energies gave way and a few days later, on the 15th of the same month, he surrendered up his spirit.

Brother Bowers was twice married, first to Thankful M.

Newell, of Newport, and after her death to Susan E. Cofran, of Goshen, the latter of whom he survived, and by whom he had three children, John Albert, Harry N., and Mary Gertrude. The first of these having graduated at Dartmouth is now in the law school of Harvard, the second is attending school at Franklin, Mass., the third, Mary Gertrude, though surviving her father, has since deceased.

Brother Bowers was earnestly devoted to his profession, and had the confidence of a large clientage, who always felt satisfied with his efforts in their behalf. He was a fluent speaker at the bar and on the rostrum,—vigorous, and often rugged, in his forms of expression,—but, with ability to avail himself of the results of a wide reading in history and general literature, his efforts occasionally rose to true eloquence.

To the virtues of a kind and faithful husband, an indulgent parent, and an obliging neighbor and friend, he added those in general which make the sum of an upright life.

DANIEL CLARK.

BY HENRY P. ROLFE, OF CONCORD.

MR. PRESIDENT AND GENTLEMEN, MY BRETHREN OF THIS ASSOCIATION: The following tribute to the Honorable Daniel Clark was written to be delivered at the meeting of the May term of the United States Circuit Court in 1891, which was held at Portsmouth. I attended the court, but the committee to prepare resolutions were not ready to report, and my address was not read.

When the court met in October at Concord I was so prostrated with domestic grief as to be unable to leave my house. At the suggestion of my honored friend, Isaac W. Smith, I now very respectfully ask the indulgence of this association to read the address here.

It was my fortune, as it was my pleasure, soon after I came to the bar, to be associated with Judge Clark, in a matter of importance to my client, and I can never forget the kind and courteous consideration with which he treated me; and so much did he shortly gain in my esteem that, although of different political faith, as long as one of my own could not receive the honor, I earnestly desired his elevation to the position of United States senator, a position which he at length attained, and which conferred no more honor upon him than he returned.

As I stand here in this presence my memory, almost like the vivid flash, carries me back over a long series of years. I see Daniel Clark, as he stood before the court in 1851, as he stood an advocate before the attentive and entranced jury, in the legislature, where his eloquence delighted lis-

tening ears, his efforts on the stump, as he went through the entire state with his map and the black patch upon it, illustrating the fact that a large portion of our otherwise fair land was covered with the blackness of human slavery, and, unless its proud waves could be stayed, its darkness would cover the land as the waters cover the sea. I saw his elevation to the United States senate with delight.

Homage is due to his memory for his constancy during the dark days of the Rebellion, and for his fortitude during the threatenings that preceded the storm. When the timidity of one radical after another during the waning of President Buchanan's administration caused anxiety and distrust, and confidence and hope were fast giving away to despair, and John P. Hale, and Horace Greeley, and Charles Francis Adams were willing to give up all and let the erring sisters go, or submit to the perpetuity of the sum of all villainies, a proposition was submitted to the New Hampshire delegation in congress, and the delegates to the Peace Convention from New Hampshire, and all consented to it except Senator Clark and my late lamented friend, Mason W. Tappan. When the question was put to Senator Clark, "Will you consent?" rising to his full length, and to the dignity of an earnest protest, "No," said he, "may I receive the execration of my countrymen while I live, and may I never be a sharer in eternity's bliss, if I give my assent or submit to any such proposition." Mr. Tappan replied, "Senator Clark's sentiments are mine."

Some one said, "There is no use if Mr. Clark will not consent to this, and Mr. Tappan sustains him; it is vain to attempt anything further."

This was told me by Judge Clark while I was district attorney, and by Attorney-General Tappan, and was referred to by Judge Clark the last time I saw him at Concord, just before his death. Afterward, when the question of reconciling the antagonism between the two sides came up for consideration, Toombs had his plan, Davis had his

plan, Crittenden had his plan, Douglas had his plan, Rice had his plan, Bigler had his plan. There were Paul and Appollos and Cephas, and none could agree. Senator Clark came forward with his plan.

"Strike out the Crittenden resolution and the amendments, and substitute the following:

"That the provisions of the constitution are ample for the preservation of the Union, and the protection of all the material interests of the country; that it needs to be obeyed, rather than be amended; and that an extrication from the present dangers is to be looked for in strenuous efforts to keep the peace, protect the public property, and enforce the laws, rather than in new guarantees for particular interests, compromises for particular difficulties, or concessions to unreasonable demands.

"That all attempts to dissolve the present Union, or overthrow or abandon the present constitution, with the hope or expectation of constructing the new one, are dangerous, illusory, and destructive; that in the opinion of the senate of the United States no such reconstruction is practicable; and, therefore, to the maintenance of the existing Union and constitution should be directed all the energies of all the departments of the government, and the efforts of all good citizens."

This resolution, introduced in the senate and passed by a majority of 25 to 23, in the midst of a raging tumult of conflicting opinions, interests, and prejudices, while the ship of state was rocking upon the billows of conspiracy, treachery, treason, and rebellion, should hand the name and fame of Senator Clark down to the latest syllable of recorded time.

We all remember that General Grant said, "We will fight it on this line, if it takes all summer." On the line of this resolution of Senator Clark, President Lincoln pronounced his inaugural address; on this line he called for 75,000 volunteers; on this line were mustered 400,000

more; on this line there were "coming, Father Abraham, 300,000 more"; and on this line, in four years was conquered the most extensive, wicked, and cruel rebellion that has been known since the revolt of the angels; and as I cast my eye heavenward I can, in my imagination, see Abraham Lincoln bending over the battlements of heaven, viewing the broken shackles of 4,000,000 of slaves, and Daniel Clark, as his mentorial friend, standing close to his right hand.

As a citizen he filled and rounded out a life of great usefulness.

In the domestic relations, if I may be allowed to allude to them here, he was a kind and devoted husband, and an indulgent and loving father. Eighty-one years the pendulum of his life swung to and fro, with no stain upon his record. He served and honored his city, his state, and the nation. As presiding officer of the United States senate, the constitutional convention, his dignity, urbanity, and impartiality manifested his rare qualifications for those honored positions.

And what shall I say of him as a magistrate? For more than twenty-four years he held the position on the woolsack, which you now so deservingly hold.[1] Before him no district judge within my memory ever tried a criminal case; and during the five years in which I discharged the duties of district attorney for this district no other judge presided at the trial of an offender against the law, and more offenders were tried during that time, and criminals tried and condemned than during all the time previous since the establishment of the court. But what shall I say of him as a judge, what Portia said to the Jew, "Earthly powers do show themselves likest God's when mercy seasons justice."

He continued to hold the office for more than a half score of years after he had passed the limit which the Psalmist has assigned to manly life, and he laid aside the judicial

[1] Judge Edgar Aldrich.

mantle which had graced his manly shoulders for twenty-four years, as pure and untarnished as when he first touched it, and laid himself down to pleasant dreams.

"Spirit, thy labor is over,
Thy race of probation is run,
Thy steps are now bound for the untrodden shore,
And the race of immortals begun.

Spirit, look not on the strife,
Or the pleasures of earth with regret,
Pause not on the threshold of limitless life,
To mourn for the day that has set."

LUCIEN B. CLOUGH.

BY JOHN P. BARTLETT, OF MANCHESTER.

To be able to speak truth without ostentation, eulogy without flattery, and history without lying, is a privilege few enjoy. That privilege, pleasant though melancholy, is ours to-day.

Hon. Lucien Buonaparte Clough was born in Northfield, N. H., April 17, 1823. His parents were not wealthy, and could give their son little besides a strong constitution, good advice, and an example of industry, thrift, right dealing, and perseverance. They soon removed to the adjoining town of Canterbury, where young Clough, in the good common schools of that town, laid the foundation on which, by his own exertions, he built a beautiful superstructure of liberal education. As soon as he had barely reached a suitable age he engaged in teaching, and after a struggle of several years was enabled to take a preliminary course at the Conference seminary in Tilton, and at the age of twenty-four entered the sophomore class at Dartmouth, from which he graduated in 1850. Among his classmates was Hon. Lewis W. Clark. After graduating, he commenced the study of law in the office of Morrison & Fitch, in Manchester, N. H., and continued his legal studies in the office of Raymond & King, in Troy, N. Y., in which state he was admitted to the bar. In 1853 he returned to New Hampshire, and opened a law office in the old Union building, near the Manchester Bank, where for forty-two years he did a large and profitable business. Possessing few of the necessary attributes of the orator, having little of the divine afflatus,

the poetic inspiration, the silvern tongue, the commanding presence, or the magnetic force so requisite for the successful advocate, he essayed not the broad and comprehensive highway of the general practitioner, but devoted his learning and energies to the mastery of no less important branches of the law relating to real estate and financial questions. The wisdom of his course was soon manifest. After a few years of study, tutored by that astute and careful lawyer and business man, the late Hon. Herman Foster, with whom he was for a time associated in business, he came to be recognized as a safe and reliable counselor. Banks, insurance companies, gas companies, and other similar corporations, placed their interests largely in his hands, and their confidence was never betrayed, nor their interests sacrificed or neglected. Ever careful and painstaking, industrious and indefatigable, he undoubtedly did more office business than any other lawyer in Manchester. He procured and kept up to date such an abstract of titles of real estate in his county as to inspire the confidence of business men, and for many years did a very large share of the conveyancing. With his necessarily busy life along legal and financial lines, he had little opportunity, and less inclination, for the excitement of politics, the only so-called political office of any consequence that he ever held being probate judge of Hillsborough county, which he held for two years only, when with exquisite irony the delicate phraseology of political necessity declared that "the public good required his removal." Conscientious, upright, and honest as he was earnest, it is at least allowable to assume that the public good would not have suffered by his retention in that important office.

I have thus briefly sketched an outline of his career as a lawyer. This really forms but the framework of his life, which was replete in every way with usefulness. Into this strong warp there was woven a woof of unusual richness. A religious life sincere and unostentatious; a moral life

without a flaw; a social life comprehensive, earnest, and enthusiastic; a domestic life which afforded the full measure of human happiness. These rounded out and made complete a perfect manhood.

The respect of his fellow lawyers was his, because he deserved it; the confidence of the widow and fatherless, and all others to whom perfect faith, trustfulness, and integrity are essential, was his, for he was ever faithful and true; the love of family and friends was his, because every association with him had but served to encourage, welcome, and cherish it.

On, past the allotted three score years and ten he traveled life's wearying journey, without faltering in the good work that was given him to do, until at last, on a beautiful Sabbath morning, on the 28th day of July, 1895, at peace with all, and with a conscience void of offence, as one who lieth down to peaceful slumber, he bade a last farewell to all of earth.

JAMES W. EMERY.

BY THOMAS E. O. MARVIN, OF PORTSMOUTH.

Hon. James Woodward Emery, born November 30, 1808, at Haverhill, Mass., was the only child of Samuel and Ruby (Woodward) Emery. He departed this life with unshaken faith in the Providence of God, on the 16th day of December, A. D. 1891.

His father, born August 10, 1775, died February 10, 1810, was a lineal descendant in the seventh generation of John Emery, who, with his brother Anthony, sailed from Southampton, April 3, 1635, in the ship *James* of London, and settled at Newbury.

His mother, born September 1, 1774, died February 13, 1856, was the daughter of James Woodward, one of the early settlers of Haverhill, N. H., who settled there in 1763. This is said of him by Powers, in his "History of Coös County," page 65,—

"In the fall of this year, 1765, Judge Woodward was married to Hannah Clark, and it was the first marriage ceremony ever performed in the County of Grafton; and as there were some things attending it out of the ordinary course, and as I had the particulars from the Judge himself, I will relate them, as they will serve to show that some things could be done then, as well as at this time."

After the death of her husband, Samuel, Mrs. Emery returned with her son to the home of her father, James Woodward, Esq., and continued to live in Haverhill until the boy went to Hanover, where he was graduated from Dart-

JAMES WOODWARD EMERY.

mouth College in 1830, one of the most thorough and accomplished students of his class.

The young man did not long remain idle after finishing his college course, and ere the close of the year of his graduation from Dartmouth, he was a favorite student of law in the office of Hon. Ichabod Bartlett at Portsmouth, and after three years of diligent application under the direction and example of the renowned "Randolph of the North," Mr. Emery successfully passed the examination which applicants for admission to the Bar in New Hampshire are obliged to undergo. As early as 1834, Mr. Emery's name appeared on the docket of the court of common pleas, August term. His name appeared on the docket of the superior court, Law term, as of counsel in 1835.

He entered upon the practice of his chosen profession fully equipped, physically and mentally, for battle in the arena where such giants as Ichabod Bartlett, Jeremiah Mason, Levi Woodbury, and Edward Cutts were champions at the jousts and tourneys on the legal tilting ground in the courts of Rockingham county. Col. Cyrus Frink, grandfather of Hon. J. S. H. Frink, was the first client for whom Mr. Emery ever conducted a case in court.

Mr. Emery soon gained the popularity in his adopted city which made success a foregone conclusion. His ability was recognized by Mr. Bartlett, and the young man was soon associated with his distinguished friend as junior partner, a connection which was maintained with mutual satisfaction and advantage until the death of the elder member dissolved the partnership in 1853.

Mr. Emery possessed the faculty, to a remarkable degree, of throwing himself with the whole force of his legal endowment and the skill of a disciplined practitioner into the cause of a client, and often triumphed over seemingly insuperable difficulties by the skill with which he prepared, and the ardor with which he contested, a cause. He was one of those fortunate men, who having retentive memories,

acquired knowledge, and the ready resources of alert mentality, are never taken by surprise, nor foiled by the assumed superiority of a wily opponent in debate, nor in the conduct of a case. This noticeable, characteristic trait of Mr. Emery was once most happily and emphatically illustrated by his renowned friend, the late Gen. Gilman Marston, who said of him, "Emery is always in a chronic state of readiness," a very significant compliment from a distinguished general and able soldier, to the skill and leadership of an eminent legal tactician.

Mr. Emery's practice was large and remunerative. The trial of his cases often involved important questions of law. From volume 8 to volume 57, the New Hampshire Reports, without a single exception, contain decided cases in which Mr. Emery appeared as of counsel. Untiring energy and close application to his practice placed him in the front rank of the legal profession in his native state.

He was possessed of varied and versatile talents and admirable tact in the leadership of men and in the management of large business enterprises. His labors in settling land damage cases arising from the laying out and construction of the Portsmouth & Concord Railroad were long and arduous, but were successfully accomplished and redounded to the credit of the able man of affairs and eminent lawyer, whose business aptitude and legal capacity brought the conflicting interests of the defendant railroad and the litigious plaintiffs to an harmonious issue and a final adjustment.

He was a projector of, and instrumental in, building the Concord & Portsmouth railroad, and also of the European & North American railroad, between Bangor, Me., and St. John, N. B. (Now known as the Intercolonial railroad.)

In the year 1857 he removed from Portsmouth to Cambridge, Mass., where he became president and general manager of the Union Horse Railroad Company, which, with his

accustomed vigor of administration, here organized and established on a sound business basis.

When the weight of accumulating years rendered business occupations irksome to him, Mr. Emery, true to his legal instincts, gave up his lucrative position in Massachusetts, and returned to the scenes of his early triumphs, and reopened his stately mansion in Portsmouth, where he quickly reëstablished himself as a successful practitioner of law.

In early manhood Mr. Emery affiliated with the Whigs, and was an acknowledged leader and influential adviser of that party until it was succeeded by the Republican party. His quick and powerful grasp of political science eminently fitted Mr. Emery for prominence in the councils of the new party. His election and reëlections to the state legislature gave conclusive evidence of his ability as a legislator.

In 1873 he was elected speaker of the house of representatives, and performed the arduous and responsible duties of that conspicuous position with unsurpassed ability and unvarying courtesy. No man, in the history of our state, ever filled the office of speaker more ably, or presided with greater dignity.

An indomitable will and resolute courage characterized the man and gave force and vigor to his intellectual faculties and sensitive temperament. He was of full, manly stature, erect carriage, handsome features, and dignified presence.

His wit was brilliant and possessed the fine edge of a Damascus blade, as the following incident which occurred on the floor of the house of representatives during a debate on the Prohibitory liquor law will aptly illustrate:

"I travelled six months in Europe," said his opponent, "and saw only two drunken men during all that time, and yet the sale of liquor there was unrestricted."

"Will the gentleman permit a question?" asked Mr. Emery.

"Certainly," responded his confident opponent.

"Who was the *other* man?" queried Mr. Emery.

This palpable hit elicited round after round of applause from the assembled legislators.

It was my good fortune, while a classmate of Mr. Emery's eldest son, Fred (who died in India), while we were fellow-students at the Portsmouth Academy, to enjoy frequently the liberal hospitality of my friend's elegant home.

No reference which I can make to Mr. Emery as a man would be adequate or complete, which fails to bear testimony to his kindness as a husband, father, and friend. He was the soul of affability and refined courtesy. His companionship with his children, taking them as he did into unreserved confidence, and thus cultivating their natural trust in, and love for, him, was an unmistakable mark of his sagacity and discernment, as well as of his kindliness of disposition.

Mr. Emery had entire trust in the common sense and intelligence of the people to maintain good government, and for that reason he was a firm believer in the public schools and in the necessity for educating the rising generations.

In religion he was a Unitarian, and attended church under the pastorate of the Rev. Dr. Andrew P. Peabody during his long term of service in Portsmouth. He was a constant reader of books, mostly of history and travel, and during his latter years took great pleasure in reading that greatest of all books, the Bible.

He was of a cheerful disposition, with a keen sense of humor, and to the very end singularly companionable to young men, from whom he ever received the highest respect, the warmest regard, and reverent attention.

Mr. Emery married Miss Martha Elizabeth Bell, daughter of Capt. Andrew Watkins Bell, formerly a prominent ship master and merchant of Portsmouth. Mrs. Emery and the four following named children survive the husband and

father: Woodward Emery, Esq., Manning Emery, Esq., Mrs. Caroline B. Farnum, and Miss Octavia Emery, all of Cambridge. The first born son, Fred, a fine, manly youth, died while on a voyage to India as supercargo of a ship in which his father was interested as part owner. In August, 1887, Mr. and Mrs. Emery celebrated their golden wedding at their elegant home on Maplewood avenue, where, surrounded by his children and grand-children, and a few near relatives and early friends, a bright and sunny afternoon crowned a married life of unusual serenity and happiness.

Thus sang the sweet-voiced laureate of England, of one of England's loved and honored dead—

"We know him now; all narrow jealousies
Are silent; and we see him as he moved.
How modest, kindly, all accomplished, wise;
With what sublime repression of himself,
And in what limits and how tenderly—
Not swaying to this faction or to that,
Not making his high place the lawless perch
Of winged ambition, or a vantage ground
For pleasure. But through all this tract of years
Wearing the white flower of a blameless life,
Before a thousand peering littlenesses,
In that fierce light that beats upon a
Public man and blackens every blot;
For where is he who dares foreshadow for an only son
A lovelier life, a more unstained than his?"

ISAAC E. PEARL.

BY SAMUEL D. FELKER OF ROCHESTER.

The subject of this sketch was born in Farmington September 26, 1857, and was the youngest son of Eleazer and Ann (Emerson) Pearl. His early life was spent in his native town and with the usual advantages of the village schools.

As a small boy a book was his constant delight. While other boys were at play he would silently betake himself to some quiet corner, there to enjoy the contents of some good book. Early relying upon his own resources we find him, at the age of fourteen years, in the employ of the well-known publishing house of Lee & Shepard, in Boston, where he remained three years, active and robust, doing the work which had previously required two young men, to the entire satisfaction of the firm. Returning to his native town he attended the Farmington High school and graduated in the class of 1878. In the fall of the same year he entered Dartmouth College and graduated from that institution in 1882, with one of the highest ranks in the class.

In college Mr. Pearl was a close student and succeeded because he deserved to succeed. With a logical and well-trained mind, with ample reserve power, he easily took front rank. In all college sports, in his college society, and in all that pertains to college life he took an active part. Never during his college course did I hear him or know of his suggesting a mean thing. Always manly and a general favorite still there was a reserve about the man that few penetrated. Although a classmate of his I could not say that I thoroughly knew and appreciated his

ISAAC EMERSON PEARL.

wealth of character until I became associated in business with him ten years later.

Mr. Pearl's favorite study was higher mathematics, and still during his spare moments he found time to translate the Greek lyric poems, a most excellent translation and one frequently and generally used by those students who seek help. Professor Richardson said to a student translating a verse from "Sappho," "I know that Mr. Pearl is generally correct, but I think such a verb in the verse should be rendered a little different," thus having the laugh upon the student.

After graduating from college he taught mathematics at Williston Seminary, Easthampton, Mass., for one year, and then entered the law office of Train & Teele and remained with them until 1885, when he was admitted to the Suffolk County Bar, having the highest rank of any one admitted.

During the time he was reading law he taught the Boston Evening High school and in Mrs. Quincy Shaw's private school. In the autumn of 1885 Mr. Pearl was married to Miss Julia W. Thornton, of Boston, and they took up their residence at Haverhill, Mass., where he had opened an office. At Haverhill Mr. Pearl took front rank as a lawyer and was a member of the school board. While a member of the school board an incident took place which showed his fine sense of public duty. The principal of the High school, a personal friend of his, was an applicant for the position of superintendent of schools. This man and his friends would be of inestimable value to a rising, young attorney. While his vote would give the position to his friend, not as well qualified as one of the other candidates, he voted and gave his influence for the best qualified person for the position.

Mr. Pearl remained at Haverhill until 1888, when he removed to Boston, teaching Latin and Greek part of the day in Mrs. Shaw's school at a salary of $2,500 a year and

associating himself with the late Joseph R. Smith in the practice of law. He remained in Boston until 1890, when his physician told him he must give up work and seek a change of climate. Here we have one entering into the full fruition of all that makes life happy, the result of years of intense application, with ample means for immediate enjoyment, with a growing law practice, with a beautiful home at Roslindale, with wife and two children, told that he must change the whole course of his life and give up perhaps forever his chosen profession he loved so well. Yet he did so without a murmur, and from then until the end his life was a continual giving up. Buoyed up by the hope of better things to come he returned to his native town, there to partially regain his lost health, entering into the practice of his profession as his strength would permit, and taking a very prominent part in the establishment and promotion of the town library.

His native town sent him to the legislature of 1893. Here as in every other walk in life he proved himself faithful to the trust imposed, voting always as his conscience dictated. He labored in season and out of season to have the legislature pass the so-called Pearl library bill, but public opinion had not sufficiently crystalized at this session to enable the bill to pass. At the very next session it was passed practically in the same form as he introduced it, and as time rolls on and libraries are established in every town the benefits of the law providing for the establishing and maintaining of such libraries will be more appreciated.

Soon after he removed to Rochester and entered into partnership with the writer. He was elected a member of the Rochester board of education and a trustee of its public library. In every community where he resided his broad intellect and sound judgment were at once recognized.

In the fall of 1894 he went to Colorado in hopes that

he might be benefited by the change of climate, but he received no benefit and in the spring of 1895 he returned home. After one of the bravest struggles for return to health that is possible for man to make he as bravely faced the end, and on August 21, last, peacefully passed beyond. "I am not afraid to die," he said. "I have not much of a creed, but I believe in God and that He is good. My only regret is in leaving my wife and children."

Mr. Pearl's characteristics were his memory and his tremendous power of application. He was always buoyant. Fail was not in his vocabulary. He was a determined fighter, but always with judgment. Joseph R. Smith, his former law partner and a man of marked ability, said of Mr. Pearl, "I think he is the greatest combination of brains and character I have ever known."

It was reserved for those who saw Mr. Pearl in his home life and his tender devotion to his family, and who thoroughly got beneath his calm exterior, to appreciate and love the man. How he did despise anything low or dishonorable. Looking back on the short life now ended we find from its beginning clear through to its close one consistent record of those virtues which constitute a worthy life.

The spectacle of one cut down in the prime of his manhood, in the very midst of a useful and meritorious career, is one that may well make us pause in the hum and bustle of our daily duties to consider whether life is worth all the wear and tear and worry that we undergo for worldly purposes alone, and it brings to mind with overwhelming force the truth that it is not all of life to live. The pure and noble life of our deceased brother remains only a memory, but it is a memory which descends to his family and kindred and friends as a priceless inheritance, an imperishable legacy of honor.

FIFTH ANNUAL BANQUET.

FIFTH ANNUAL BANQUET.

The Fifth Annual Banquet of the Association was held in the Armory at Nashua, at the conclusion of the annual meeting. In response to the call of Thomas D. Luce, of Nashua, the following toasts were given:

THE GOOD THINGS IN THE LIFE OF A NEW HAMPSHIRE LAWYER.

He can reside in Maine, and still be included as a New Hampshire lawyer. By William L. Putnam.

He can tell a good will when he sees it, and can also have the good will of every member of the Bar. By Edward E. Parker.

He can deal so fairly with his brother lawyers that they will make him a judge. By Robert M. Wallace.

He can help others in their desire to learn the law. By Jeremiah Smith.

He can sing us a good song and tell us a good story. By Patrick H. Sullivan.

He can move to Massachusetts and gain new laurels there. By Albert E. Pillsbury.

He can prove to municipal and other corporations that they can live without souls but not without safe advisers. By Edwin F. Jones.

He can do good work in court and in his office as well. By Jeremiah J. Doyle.

He can fight it out on this, or any other line, if it takes all summer or all winter either. By Harry G. Sargent.

IN MEMORIAM.

CHARLES DOE.

At the opening of the Adjourned Law Term of the Supreme Court in Concord, on the 13th day of March, 1896, services were held in memory of Charles Doe, of Salmon Falls, late Chief Justice of the Supreme Court. To the end that the remarks there presented may be preserved they are printed herewith as a part of the proceedings of the Association.

Lewis W. Clark, Justice, said:

We meet under peculiar circumstances. The chair of the chief justice is vacant by death. The announcement came as a startling surprise, but the term of the court could not be delayed and the court is therefore open for the transaction of business.

Edwin G. Eastman said:

I made the acquaintance of Judge Doe at the first term of court, which I attended after my admission to the bar, and from that time to this day, I have admired and respected him because of his extraordinary mental powers, his untiring industry, great legal learning, and rugged honesty.

Born, reared, and educated among our granite hills, he respected the rights of the people of our state as guaranteed to them by the constitution of the fathers. A zealous defender of that constitution, he strenuously opposed all attempts to materially alter its provisions, and once declared that the amendments proposed by some constitutional conventions seemed to

CHARLES DOE.

him more like the work of vandals seeking to despoil the tombstones of their ancestors, than acts of enlightened statesmen.

He came to the bench at a time when the rigors of the common-law practice in our court had been only partially relaxed, and when sometimes it was more important that the pleadings should be exactly right, than that right and justice should be promptly and exactly done. In this condition of affairs he was an early advocate of the doctrine that every suitor was entitled to a speedy, certain, convenient, and inexpensive remedy.

Often called to preside at important criminal trials, he guarded with scrupulous care the rights of the poor and friendless prisoner, and if he erred in the administration of the criminal law, the mistake was always in favor of humanity.

No man did more than Judge Doe to elevate the standing of the bar in our state. When he came to the bench, he announced and enforced the rule that witnesses in court had rights which every lawyer was bound to respect. Integrity, industry, and learning being qualities that he especially admired, he insisted that no man not possessed of those requisites should be admitted to practise in our court.

Democratic in his tastes and methods of life, honest, modest, cautious, and fearless in the discharge of every duty, he was trusted, followed, and revered by the bar and the people. "Verily a great man has left us."

Isaac W. Smith, of Manchester, said:

May it please your Honors:—Some three years ago, the late chief justice, in a personal letter to me, wrote, "I may some day suddenly disappear." It is difficult to think of him as no longer living. For the first time in thirty-five years, so far as I can recall, his seat upon this bench is vacant. His death, coming with a suddenness startling not only to our whole state, but wherever his fame had gone, may fitly be characterized as his disappearance from earth.

Rev. Dr. Bouton, I think it was, asked me on the day of the funeral of the late Chief Justice Bell, if I had considered how much learning, legal and historical, was lost to the world by his

death. That is perhaps our first thought in view of the death of Judge Doe—the irreparable loss to the whole civilized world of the further use of all the legal learning with which his mind was stored—the accumulation of half a century of unremitting study.

It is too soon, while the shadow caused by his decease is hanging over us, to gather up the traits of his mind and character and so arrange them with fitting comment as to do entire justice to his fame and memory.

That he had natural aptitude and abilities of the highest order for judicial work must be universally conceded. He enjoyed the unique distinction of having held the office of justice of the New Hampshire Supreme Court for a longer term than any of his predecessors.

Being an excellent *belles-lettres* scholar, and finely equipped by legal education and training for the office of judge, his opinions, as must be expected, are models of classical diction, legal logic, correct statement of legal principles, and of exhaustive research of the law. The manuscript as prepared for the printer was written with the most scrupulous regard for his comfort. Every word was as legible as if in print, while there was absolute accuracy in the use of italics, quotation marks, and in punctuation. This was characteristic of the thoroughness with which all his work was done.

In the brief notices which his death has called forth, I notice a tendency to speak of him as overturning the ancient common law without legislative sanction, and as one who had little regard for established decisions. He did not hesitate to make application of the maxim, *Cessat lex, cessante ratione*, whenever there was occasion for it: but I think a closer inspection of his opinions will disclose the fact, that he was accustomed to cite authorities with as much, if not greater freedom than other judges.

Judge Bell reformed the equity practice without legislative authority, for which court and bar alike have reason to bless his memory, and no one has ever yet questioned that he did not transcend the powers vested in the court by the constitution.

The reforms instituted by Judge Doe were in the same line—of reforming methods of procedure that had outlived their usefulness, with the general acquiescence and approval of the bar.

The reforms have stood the test of time. He was no iconoclast, but he firmly believed all governments and laws were made for the protection of legal rights. He was perfectly fearless in the discharge of his official duties, but always approachable. He stood for the right as he saw it, regardless of what others might say; and yet he was not indifferent to what others might think.

There was no branch of the law with which he did not seem perfectly familiar—whether equity, the common law, or criminal law.

He had a wonderful faculty of grasping as by intuition the material points of a case: but he was patient with others less familiar with the law, especially the younger members of the profession.

He was a man of genial disposition and affable towards all with whom his duties brought him in contact.

I may, perhaps, be permitted to add that he had the thorough respect of his associates upon the bench. He assumed no superiority, but meeting them on a common level was ready to listen to argument, and readily and cheerfully assented to the conclusions of others when the reasons were sound.

His work will never be undone. His influence will be felt wherever civilization prevails, and as long as peoples are governed by constitutions and laws framed for the protection of equal rights.

Joshua G. Hall, of Dover, said:

May it please the court—I shall not in what I may say attempt any estimate or analysis of the remarkable powers of Judge Doe as a jurist. Any such attempt on my part would be inadequate and unsatisfactory to the court and members of the bar present as well as to myself. Others who follow me will in fitting terms remind us of the extraordinary mental power of the great jurist who has presided over this court almost a score of

years with such remarkable ability, but I desire to speak of him as my personal friend all the mature years of his life, and I presume I knew him longer than any other one present excepting Mr. Justice Clark. I first met him in Dartmouth College, where he graduated two years before me, though our acquaintance really commenced shortly after when we were students together in the office of the late Hon. Daniel M. Christie at Dover. Judge Doe then and frequently in after years used to insist that he was an idler through his college course; that he studied little and accomplished less there; but the fact of his election to the Phi Beta Kappa society as one in the first third of his class, which was one of at least average scholarship, indicates that he was not wholly without application to books in college even. I suppose what he really meant was that he had an easy time of it at Hanover compared with his after-work in the law. After he entered on the study of the law his industry was great and his progress rapid. Mr. Christie was then in his prime and at the head of the profession in this state; he was as keen and discriminating in making up his estimate of the young men who were students in his office as he was in the investigation of legal questions, and he very soon took the correct measure of the quiet young man who was in due time to sit at the head of the supreme bench, and ever after, whether as student, lawyer, or judge, Mr. Christie always treated Judge Doe with deference and spoke of him in terms of strong commendation. I have never happened to know a man who seemed to derive so much advantage from the law school as Judge Doe did, and when he returned from the Harvard Law school to Dover he seemed at once an accomplished lawyer, fully equipped to answer any demand of a professional nature that might be made upon him. I was asked yesterday, by one of the younger members of the bar, if Judge Doe as a young man gave proof of the remarkable powers of mind that distinguished him in later life. I should say in answer, not fully, but from the first he showed that tireless application, that discriminating judgment, and that remarkable power of thoroughly analyzing every legal proposition he encountered in the books, or in his daily business, which brought him his great fame in later years.

Nobody could really know the man unless he was his personal friend. The casual observer who met him in the street or in the public conveyance, gained a very poor and inadequate idea of his best qualities. He carried with him in his manner and in his speech an air of indifference that led many to think that he knew little and cared less for what was going on in the world about him, indeed he took pains to say that he took little interest and knew scarcely anything of the every-day life of the state; still no man felt the public pulse more nicely, or knew better what the drift of public opinion was on all sorts of questions than he; and whenever occasion required, or he desired to influence and control men I never knew a more accomplished manager of men.

Had he given his life to politics he would have been a leader in public affairs. He might have been regarded as a politician for a time, but not long, for he was too great and sagacious for such a position, and he would have taken his appropriate place among the statesmen of his time.

Men who did n't understand him, misled by his indifferent air as he moved among men, thought him unsocial and even without friends outside his kindred, and some of our journalists have in their notices of him since his death so described him, but I am able to say as one who for forty years and more enjoyed his kindly friendship, that they are entirely at fault in their estimate of the man. It is true that in his retirement with his books he met comparatively few, except when engaged in the discharge of his official duties, and his circle of intimate friends was not large, but those who were his friends he held as with hooks of steel.

Possessed of an independent fortune, he and his family lived plainly and frugally, and so set an example only too much needed in the prevalent extravagance of these times, but to the deserving poor about him he was generous and almost lavish in his benefactions. Easily the first citizen of the commonwealth, unequalled in ability as a lawyer and judge, his loss to the state and the country is great and as time goes on will be more keenly realized than now, but I am confident that none outside his family will more sincerely mourn

his departure, or more keenly feel his loss, than the poor and destitute of his acquaintance.

William L. Foster said:

May it please the court,—it is impossible to regard without emotion the vacant chair of the chief justice. Through many long years we have been accustomed to his presence. In the vigor of strong manhood, and in the encroaching feebleness of bodily decline, we have found him at the post of duty, and though the lines of care and suffering upon his face had become pathetic, his mental vigor was unimpaired, and the sense of his sudden removal comes upon us with a shock.

The first sensation we experience is that of an irreparable loss, but we immediately realize that no human loss, however great, is disastrous. Great men come and go, great judges come and go, and still without interruption the courts go on, justice abides forever, and the majesty of the law is undisturbed. We bow our heads under the weight of a deep and heavy sorrow, but we lift them again with a sense of gratitude for the blessing of a life devoted for more than thirty-five years to the service of the state.

The impress of that life upon the jurisprudence of the state, controlling, reforming, perfecting, and adorning it, is imperishable. Disassociated from his public service the memory and example of a life of strict integrity and purity is our perpetual heritage.

There seems to be a sort of compensation and antidote for our grief in the contemplation of the manner of our friend's departure, such as he himself expected and desired. Think of it. Think of it without complaining sadness. Last Monday morning he left his home and family, with no anticipation of harm, to attend to the business and duties of this term of court; arrived at the railroad station at Rollinsford, and was awaiting the coming of the train which should bring him to this city. As he sat there, no doubt his ever-busy brain was engaged in some problem of the law, which you, his associates, will this day consider.

To him, and to those about him, there was no warning of a silent and unseen presence, but voiceless and invisible the Angel of the Lord passed by and touched him with his finger, and he slept.

In a moment, in the twinkling of an eye, for him all was changed. In an instant the problem was solved. All cloudy darkness was lifted, and he saw the light of an everlasting morning. No more perplexity. No more sickness, nor sorrow, nor care. No more weariness nor fatigue, but sweet slumber and refreshing rest; for so "He giveth His beloved sleep."

John S. H. Frink, of Greenland, said:

By the death of Judge Doe, the common people have lost a friend. Great learning, distinguished position, or aristocratic alliance never alienated his sympathies from the common folk. The great mission of his life has been to accomplish something for their good. The sphere of his activity in their behalf has been primarily and almost necessarily within the line of his profession.

While he has determined individual rights and redressed individual wrongs, he has also broadened the principles of the law and established simple rules of procedure, so that, in the language of the constitution, the people might have a "certain remedy," "completely and without any denial, promptly and without any delay."

He has so adjusted legal remedies to legal rights that no one who was obliged to have recourse to the law, ever observed under his administration of it that there was any distinction between law and right.

No suitor, however poor and humble, ever entered into a legal conflict with his wealthier neighbor at any disadvantage, so far as the parity was under Judge Doe's control.

Some of his critics have said that he has rendered the law fickle and uncertain. Uncertain in what? No lawyer who championed a just cause ever felt distrustful of the result, so far as Judge Doe could direct it.

It was too often, when we hoped to attain results that our

enlightened conscience did not approve, by arbitrary precedent and artificial rule that our legal education did approve, that we complained of his methods.

You, gentlemen of the court, have lost a wise, intrepid coadjutor; we, brothers of the Bar, have lost an accomplished and conscientious leader; but the people, whose necessities may drive them to the law, have lost a friend.

We need not speak of Judge Doe's head. Its rare products will adorn the annals of our jurisprudence, so long as courts shall exist and precedents be quoted. But large as was his brain, it was no larger than his heart. He was a philanthropist, —one who loved his fellow-men.

I would not invade the sanctity of his private and domestic life. That is something to a man apart. He answers for that only to his family, his conscience, and his God; but there can be nothing in the record of Judge Doe's private life upon which we would have the recording angel shed a blotting tear.

There was in his home "plain living but good thinking" and right acting. Ostentation was always absent, hospitality and generosity ever present. Many a poor neighbor's benediction will follow him to the unknown world, for his many acts of kindly solicitude and generous aid, in this.

Some of the manifestations of his kindness of heart were somewhat eccentric. I do not think he ever condoned criminal intent or moral obliquity, but he certainly often palliated their punishment. He recognized the frailty of human nature, its trials and temptations, and often mitigated the rigors of the law accordingly.

Judge Doe had his eccentricities as we all know. They neither added to nor detracted from his greatness. They may have given him an ephemeral distinction, but he did not need it. He was great and good over and above his peculiarities. They were something of themselves—distinct from the qualities of head and heart that have rendered his name imperishable in the annals of our jurisprudence.

However carefully we may horoscope the future, I think we will find the fame of this brilliant, somewhat eccentric, but always just judge, this big-hearted, generous, and public-spir-

ited citizen, enduring; and that it will enlarge as the years in the cycles, come and go.

Charles H. Burns, of Wilton, said:

May it please the court and gentlemen of the bar: We meet this morning in the shadow of a public sorrow; and we all feel a sense of personal loss. In the brief tribute I am to pay the honored dead, in this presence, I shall speak only of his conspicuous service to his home and to his state. Whatever personal peculiarities Judge Doe may have had are completely overshadowed and become wholly inconsequential in the light of a noble life of consecration to home and to his great profession.

When he was not in court he was on his farm, or at his own fireside, among his books and in the bosom of his family. His whole life was one of fidelity to wife and children, and was without spot or blemish. A domestic life so pure and unselfish, so attentive and kind, is the mark of a noble man. It was in his home and among his books that his social and genial qualities were best seen, and I count the visits I have made to his house and the charming interviews I have had with him there as among my pleasant recollections of Judge Doe. His information was so great and varied, his mind so observing and critical, and his manner so earnest and enthusiastic that his conversations were instructive, entertaining, and delightful.

But interesting as this side of his character was, his life work which we as lawyers most keenly appreciate, was on the bench of New Hampshire. Here he displayed those wonderful traits which for several decades have made him a famous figure in our jurisprudence. His example as a thorough lawyer, going to the bottom of every question, exhaustive and complete, has made a marked impression upon the bar of our state. It was not prudent to appear before him without a firm grip upon the case in hand. His swift and strong mind was ever alert to detect fallacy and error.

He was a man of tremendous mental power; he was equal to the moment and the emergency, and he knew what to do next. He was a great judge, "a sufficient man, an officer equal to his

office." He could "toil terribly" and by marvellous and conscientious industry, supplementing a splendid inherited genius, he has become one of the instructors of the age. He was among the ablest jurists New England or the country has ever produced. It is impossible now to make any reliable estimate of the work he has accomplished. His fame will grow from its present greatness. He was large enough to be seen in every civilized country, and his opinions are quoted the world over. His death is not only a sad and serious loss to New Hampshire, but to the entire legal world. With possibly but a single exception he has served on the bench of a court of last resort for a longer period than any English judge; and his opinions will live as long as the English language is read and spoken.

He has erected his own monument. In St. Paul's in London there are splendid tombs built in honor of England's heroes, Wellington and Nelson, surrounded with impressive trappings and insignia to remind the beholder of their great careers. Within a few feet is the grave of Sir Christopher Wren, the architect of St. Paul's cathedral. It is covered with a plain slab above which is this sentiment, "If you would know his work look around." And, standing by the grave of Chief Justice Doe, we can say with just pride, if you would know his work turn to New Hampshire's legal decisions formulated by this master hand during the last quarter of a century. Observe how useless and dangerous technicalities have been brushed away, how intricate legal procedure has been wholly reformed, and how equity has triumphed over fraud, and right over wrong. These are his monuments.

He has passed away, but the reforms he has inaugurated which are so abundantly praised by all lovers of justice and law, will not die. The highest compliment we can render the noble dead is to preserve, perpetuate, and, if possible, improve the liberal system which was his pride and his honor.

The people of New Hampshire believed in Charles Doe. Emerson has said, "It is natural to believe in great men." We believed in the chief justice not merely because it was natural, nor indeed because he was great, but because he was not only great but honest. In him we beheld exemplified that trait,

without which no character is truly great, untiring and unsparing integrity.

He gave to the service of the state his strength and his life. Even when he fell his hand was at the plow. And so we say rest to the tired body, and peace to the great heart of our beloved dead chief justice.

David Cross, of Manchester, said:

In the winter of 1892 it was my good fortune to become acquainted with Judge Doe and know him in such intimacy as I had never known him before. It became my duty to prepare an address before the Southern New Hampshire Bar Aseociation, and with considerable labor I had written an address upon "The Changes in the Law and Legal Procedure in New Hampshire for One Hundred Years." In this address I had given credit to Judge Doe, more than to any one, for improvements in legal procedure. I referred to cases in the reports with which all lawyers are familiar. I read the address to Judge Doe, and when I attributed to him the credit of improvements, he stopped me suddenly and said,—"That will not do. No credit should be given to any living man, especially to a judge, for anything that he has done; wait until he is dead and then, in balancing the good and the bad, what is proved to be valuable and what injurious, speak of him as his life on the whole has proved to have been." I remember distinctly where I had given him credit for an opinion overruling past decisions and establishing new ones, he said the credit belonged to some other person; to Judge Stanley in one, and to others in other instances.

Afterwards, before I had delivered the address, he wrote me several letters, the general tenor of which, among other things, was that I should not give him credit for any improvements in the law, but to others. In one of these letters, in speaking of the bar of New Hampshire at the present time, he wrote,—"Never before has the state had so learned, able, honorable, and trustworthy a bar as now. Instead of ignorance and weakness being introduced by sweeping away the technicalities of pleading, knowledge and strength more and more abound. The legal learning, capacity, and usefulness of our bar is far in

advance of what it was forty years ago. The service it renders to the community is of incomparably more value. Then very few thought of strenuous efforts to keep clients out of the law; now such efforts are made by substantially the whole body of successful practitioners. More lawyers try cases than formerly, because there are more men of learning and capacity who can try cases creditably." In this same correspondence he wrote me in relation to the rules for regulating practice in chancery prepared by Judge Bell in 1889. "It is a masterpiece and monument; the best piece of work of the kind that I have any knowledge of."

The conversations I held with Judge Doe during the winter of 1892, and the correspondence relating to the lawyers, judges, and judicial procedure in New Hampshire, led me to see him in an entirely different light from what I had ever known him before.

Before this time I had seen him for many years as a presiding judge, sharp, keen, and incisive in his rulings of the law, and at times there seemed to be peculiarities which led me to fear that my case might not have the quiet, calm consideration that I reasonably expected from such a man as Chief Justice Bellows or Chief Justice Sargent. I had read his opinions with interest, and often with surprise and delight at the wealth of learning, the extent of examination of authorities in this country and England, so that I held him in the highest respect and recognized him as one of the ablest lawyers of our time. With personal association with him in 1892 and since, I revered him as a lawyer, but I loved him as a brother.

I have had the curiosity to spend a little time in the examination of New Hampshire Reports to find the name of Judge Doe as lawyer and judge in the cases reported. I find his name as the author of a brief first at the December term in Strafford county for 1855 upon jurisdiction in the police court in Dover and also in the Thirty-fourth, *State* v. *Gove*. In these briefs we discover the same clearness of expression and directness in reaching the heart of the controversy which characterized his subsequent life. He was appointed to the bench September 23, 1859, and I find ten opinions delivered by him at the following

December term, and now reported in Thirty-ninth New Hampshire Reports.

The record of Judge Doe's life is made up. In accordance with his insistence to speak only of the departed judges, I am at liberty to strike the balance, as he would say, as to his life-work, and to read his record. It is a pleasure as well as a duty and high privilege to speak of him as I think he deserves. It may almost be said of him that he was born into the judgeship of New Hampshire, that he there lived and wrought and died. His life was that of a judge of our highest court. We have had men of great ability and great acquirements: Chief Justices Jeremiah Smith, Richardson, Parker, Gilchrist, Perley, Bellows, and Sargent. All of his predecessors had achieved eminence and success at the bar but held the place of judge for comparatively few years. Within a few years of his admission to the bar, before he had time or opportunity to do much as a lawyer, Judge Doe was appointed judge. For about thirty-six years he wrought with a diligence and constancy unsurpassed, and, I think, unequalled by any of his predecessors. He was fortunate in the length of his experience. The state has been fortunate in a man of his genius, honesty, and self-sacrificing determination for so many years. His associates in office during the past thirty-six years deserve the highest commendation for what has been done to give respect and honor to the judicial opinions of the state, but if we select anyone who deserves the highest honor for radical and important changes in the judicial procedure of this state, I think the credit belongs to Judge Doe. The life-work of Judge Doe is now a part of New Hampshire history, and of New Hampshire honor and renown.

Judge Dillon in one of his lectures says,—"I select Bentham as the typical radical or progressive, because he is in an eminent sense the father of the efforts which have been made in the English law during the last hundred years looking to its improvement or reform." Bentham was the pronounced enemy of what we call "case law," of what he styled somewhat contemptuously "judge-made law." Judge Doe, I think, had many of the characteristics of Bentham. He was not satisfied

to follow a precedent where he believed the precedent would lead to wrong practice, and here I might cite many cases in New Hampshire Reports if I had time to prove that his disregard of precedent was a higher regard for the right. He could look through the antiquated coverings of past ages of legal fiction and come out in the clear light of common sense.

I think the three leading characteristics of Judge Doe were his simplicity or modesty, unselfishness, and laboriousness. His simplicity of character led him almost to disregard what to most of us would seem to be propriety of dress and demeanor as a judge of the highest court; he was upon kindly terms with members of the bar, and with all people. He never assumed or put on the appearance of an official. He showed continually his respect for the man, and not for the circumstances or position which he held. He threw aside the ancient forms of opening and closing court. In laboriousness or diligence, we think he was extravagant. He did more than he ought to have done, and his life might have been, and would probably have been, longer spared if he had been less laborious. It is said of him that when engaged in the study of a case, he would work all day and all night, and for weeks together, with little rest to himself.

As to his unselfishness, he always had a good word for every one and never an unkind one to any. He never claimed more or so much as belonged to him. He was willing and ready to give credit to other judges, even credit which belonged to him, rather, than to claim anything for himself. In one direction, it seems to me, he had what I would call genius. It was the ability to look through a multitude of facts in a vast amount of testimony and argument from the ablest and best lawyers and to reach a correct conclusion. In quickness of perception and grasp of comprehension, I do not believe New Hampshire has ever seen his equal at the bar, or upon the bench. If a lawyer stated his case, Judge Doe seemed to comprehend the whole situation from beginning to end. Sometimes it would seem as though he did not give attention to the testimony as it went to the jury, or in equity cases, but when the trial was through, counsel would see that no point on either side had escaped his observation.

Judge Doe as an independent thinker who could examine a question of law upon its merit uninfluenced by precedent, may be seen in many of his decisions.

I cite a few in illustration of this point. In his dissenting opinions in *Boardman* v. *Woodman*, 47 N. H. 140, and in *State* v. *Pike*, 49 N. H., that "The opinions of ordinary persons founded upon personal observations of appearance and conduct should be received in questions of sanity or insanity;" and in his assertion in *Walker* v. *Walker*, 63 N. H. 326, that "The test of the legality of a form of action or other pleading is not the time of its invention, but its utility as a method of vindicating rights entitled to the best form and methods that can be produced;" and in *Moody* v. *Watson*, 64 N. H. 179, "The law was formerly perverted by strained and quibbling interpretation and by a strict observance of frivolous formality and a disregard of substance and principle. This arbitrary and aggressive power, capable of nothing but wrong, is the one that does not exist;" in *Metcalf* v. *Gilmore*, 59 N. H. 433, that "As there was a time when there was no common-law precedents everything that can be done with them could be done without them."

If I were to cite from the New Hampshire Reports a decision illustrating his ability as a lawyer to investigate and write a perfect monograph upon a question of law, I would cite *Aldrich* v. *Wright*, 53 N. H. 398. This was an action for debt to recover the penalties prescribed by statute of $40 for killing four minks. Ordinarily we should expect the court to decide the case in an opinion of a dozen words, or a page. Judge Doe spent, I have no doubt, many weeks in preparation of this opinion of twenty-five pages.

If I were to select one among all his learned and able opinions as superior to any other, I would take this one. It is a treatise in itself of the right and limitation of protecting personal property and the person, or the distinction between a man's right to protect his personal property and himself. I do not believe there can be found in all the reports or in any text-books, so perfect an exposition of this right of defense. It is philosophical and logical. It is the concentration of the best thought and

profoundest knowledge in this branch of the law. If I were to cite from the same reports a decision illustrating Judge Doe as a man of intense feeling and hater of sham and fraudulent practices and his wonderful power of clear expression, I would take *Delancy* v. *Insurance Company*, 52 N. H. 581. The opinion covers ten pages, and three fourths of it is occupied in scathing sarcasm, exposing the object in the formation of the defendant corporation and similar mutual fire insurance companies and the methods of defrauding individuals and the public. Let me quote a few sentences,—"Some companies chartered by the legislature as insurance companies, were organized for the purpose of providing one or two of their officers at headquarters with lucrative employment,—large compensation for light work, —not for the purpose of insuring property; for the payment of expenses, not of losses. There was no stock, no investment of capital, no individual liability, no official responsibility. Forms of application and policies like those used in this case of a most complicated and elaborate structure were prepared and filled with covenants, exceptions, stipulations, provisos, rules, regulations and conditions, rendering the policy void in a great number of contingencies. The study of them was rendered particularly unattractive by profuse intermixture of discourses on subjects in which a premium payer would have no interest. The compound if read by him, would, unless he were an extraordinary man, be an inexplicable riddle, a mere flood of darkness and confusion. Seldom has the art of typography been so successfully diverted from diffusion of knowledge to the suppression of it." It is a rare treat to read this opinion, not as law, but as a specimen of satire. It reminds one of the sarcasm and invective in the letters of Junius. If we could take it out of the reports as a legal opinion and publish it as an essay upon the fraudulent practice of some of the mutual insurance companies, it would take high rank in literature as one of the best satires ever written. If Judge Doe had not been one of the ablest judges, he might have become one of the keenest and best satirists in literature.

It may be said of him as was said of Benjamin R. Curtis, "It does not admit of denial that his character as a lawyer bore

that genuine stamp of greatness which cannot be contradicted or disputed, the test of which is the spontaneous recognition and homage of all lawyers and courts." We can say of him as Dillon says of Bentham, "He had all the personal qualities of a reformer, deep-seated sincerity, unbounded faith in his own powers and self-sufficiency, unwearied zeal and dauntless moral courage."

Robert N. Chamberlin, of Berlin, said,—

In offering a brief tribute of respect to the memory of the late Chief Justice Doe, I am reminded of the fact that I do so under difficulties not shared by the learned gentlemen who have preceded me. They were life-long associates or acquaintances of Judge Doe, while I, like most of the younger members of the bar, who chanced to live a distance from him, knew him only in a professional way, and our estimate of his ability and worth is formed from the investigations we have made of his opinions as they are found in the reports or listened to when delivered in open court; and, while we were deprived of the pleasures experienced by those who were fortunate enough to occasionally meet him socially, or frequently meet him professionally, I believe we have an equally high regard for him as a man, and appreciation of his great abilities as a jurist.

His reputation as a man and a jurist will not suffer in the future in the opinions of those who will have occasion to examine his work, notwithstanding they will know but little of the impressiveness of his great personality.

I find from the records that I was but three years old when he was appointed to the bench in 1859, consequently his name is associated with my earliest recollections of courts. Probably three fourths of the practising lawyers in New Hampshire have been admitted to the bar since his first appointment to the bench, and, of course, the younger men do not fully realize the importance of the work he accomplished in simplifying the practice in our courts and it is only when we compare our simple, direct, and inexpensive procedure with that of other jurisdictions that we can, in a small degree at least, comprehend the value of his services.

It was my privilege within two or three years to attend a court in the state of Connecticut, and in conversation with the presiding judge—an eminent lawyer—some decisions of our court were discussed, and in that conversation the judge paid a glowing tribute to the ability of Judge Doe, saying that he considered him one of the greatest jurists this country ever produced. Imagine my surprise when upon inquiry he informed me that he had never met Judge Doe, and his opinion of the man was formed entirely from the study of his opinions with which he seemed quite familiar. By these monuments of his courage, learning, and industry, will future generations of lawyers judge him, and the reputation so justly accorded him by his associates and acquaintances will be maintained.

It is said that he was peculiar, even eccentric, but no peculiarities appear in his opinions, and I will venture the remark that no man who engaged in the discussion of legal principles before him ever thought of any peculiarities. He engaged your whole attention whether speaking or listening. His quick and powerful mind seemed to comprehend and absorb everything and, apparently, he considered the suggestions of the young and inexperienced as carefully and as fully as those of the older and experienced men.

For the accomplishment of his great work Judge Doe was fortunately situated. He was surrounded while upon the bench by strong, learned, able, conscientious, and industrious men. When they agreed with him their support was a bulwark of strength and power capable of resisting all assaults, and if they differed from him they were a positive force, that could be overcome only with the weapons of reason and logic.

Judge Doe and his associates have left their impress upon the jurisprudence of New Hampshire and it will there remain as long as this commonwealth shall enjoy the blessing of civil liberty under our constitution and the common law.

John M. Mitchell, of Concord, said:

MAY IT PLEASE THE COURT:—I most cordially endorse the sentiments of the resolutions presented by the attorney-general.

It is fitting that we should pause, on our rapid march through

life, and pay respect to the memory of the distinguished dead who has rendered valuable services and in a large measure consecrated his life to the service and for the benefit of the public.

Chief Justice Doe has long been a conspicuous figure in the public, professional, and judicial life of this state.

His was, in many respects, an unique and striking intellectual character.

He embodied many of the distinguishing traits of a great judge; he was honest and able; and, in the discharge of his official duties, he was patient, independent, and fearless.

Strong men and their works merit recognition and careful study. Emerson says that

> "It is natural to believe in great men."

> "The world is upheld by the veracity of good men;
> They make the earth wholesome."

The law may be said to be the product of the structural action of the human mind; and the better and stronger that mind, the more perfect is and should be the law.

Men, and their actions, in life's theatre, are viewed from different points of observation.

Some we are permitted to observe at the domestic hearth, where they are the centre of affection and devotion; others are viewed while dazzling social life with the exuberance of their splendid social qualities; still others are observed only upon the great battlefield of life, where each is struggling for mastery, and where the elements of selfishness, ambition, and jealousy, act their part; but the lawyer, as he observes the action of the judge who evenly holds the scales of justice, is permitted to gaze upon those elements of man where are exhibited the finest and highest traits of the human intellect and the most sublime qualities of the human heart.

Judge Doe had, by the exercise of the qualities of his keen, penetrating, and well-stored mind, a marvelous power to detect the weak points in a proposition; and with astonishing celerity he marshalled a mass of cogent reasons to annihilate a sophistry. The avalanche of logic that came, with lightning speed,

from his remarkable mind, to confuse and envelop an untenable position, was a terror to any man who attempted to maintain it.

He had a subtle insight, legal acumen, and a ready ingenuity, which enabled him to trace a deduction from a mass of, apparently, conflicting decisions.

His decisions are monuments of industry and learning; many of them are exhaustive researches and learned dissertations upon important questions of constitutional, municipal, and corporate law, as well as those which involved other important legal principles.

The lawyer and historian of the future, as, in retrospect, they move back "through the corridors of time," and marshal the names of the great leaders, lawyers, and judges of the past, and take an inventory of their works, will find conspicuous, in the front rank, Chief Justice Doe and his works, and they will then discover that but little of his work has been undone, or discarded by time and experience.

To the young man of ambition, who is imbued with the elevated desire to do his duty and act honorably his part, the lesson of Judge Doe's life will be an inspiration; its success illustrates the possibilities of life under our institutions.

His life strikingly emphasizes the truth of the poet's declaration that,

> "Honor and shame from no condition rise;
> Act well your part, there all the honor lies."

This sudden and unexpected summons of Judge Doe from the labors of life to the rest of eternity is an impressive suggestion of the uncertainty of this mortal existence; it evidences the narrow margin between time and eternity; the slender and delicate character of the thread which binds us to earth, and recalls with startling vividness the truth of Gray's eloquent lines that,

> "The boast of heraldry, the pomp of power,
> And all that beauty, all that wealth e'er gave,
> Await alike the inevitable hour,—
> The paths of glory lead but to the grave."

Alvin Burleigh, of Plymouth, said:

I fully concur in the just and discriminating tributes here paid to the pure life, lofty character, and great ability of our late chief justice. We are all moved by the same feelings of sadness and sincere regret. We are alike profoundly impressed with a sense of the irreparable loss which the bar, the bench, and the people of our state have sustained. When a great and good man dies, the immediate circle of his personal associations and activities is not alone touched; the whole civilized world suffers a positive loss. In no professional sphere do greater opportunities for tangible, beneficent achievements lie than in the pathway of the just and great jurist.

Judge Doe was a man of transcendent ability. Like all truly great men he was so born and not made. Genius everywhere bears the stamp of God, and the greatest altitude of human achievement is attained, not by acquired, but by God-given, power. Other chief justices we have had who were as lofty in purpose, as great in fidelity, as constant in endeavor as he, but their vision was limited by the natural tenements of clay in which they lived, and the halo of genius does not illuminate their works.

In the marvelous and beneficent judicial work of a long professional life he had erected, ere he slept, his own great monument. Nothing that we may say here to-day can add to or detract from its great proportions. We are near enough now to its outlines to observe and unduly magnify some of the little defects that may seem to mar its perfect symmetry, but these will fade out of sight as time recedes and the centuries roll away. It was built to endure, and in the ages to come it will stand out on the judicial horizon like a distant mountain peak, clear, grand, and unapproachable.

In this hour of affliction there are some things to comfort us, and for this our thanks are due. Judge Doe has been providentially spared to round out and complete a long and useful life at the bar, and upon the bench, of our beloved state. We have been the immediate beneficiaries of his genius, his learning, and his monumental work. The world is wiser and better from his

having lived and wrought in it, and the plane of professional practice and procedure is higher and broader than when he first ascended the bench and began the evolution of a judicial system that had justice and convenience as its chief corner stone.

In our regard for the fortunate dead, let us, who remain, be not unmindful of the ennobling lessons taught by his pure, successful life and his upright character. In the contemplation of his intense application to study, his untiring industry, and his complete consecration to the noblest of professions, let us find an exalted inspiration to emulate his virtues and renew our devotion to the important work to which we have dedicated our lives.

"No farther seek his merits to disclose,
Or draw his frailties from their dread abode,
There they alike in trembling hope repose,
The bosom of his father and his God."

Alonzo P. Carpenter, Justice, said:

Judge Doe sat on the bench almost thirty-five years—longer than Marshall, Taney, Shaw, or any other judge in this country so far as I know—longer certainly than any one whose name is worthy of mention in connection with his, longer also than Lord Mansfield or any English judge with the single exception of John Heath, who was a justice of the Common Pleas from 1780 to 1816.

Of all the common-law judges, both in England and this country, who are usually spoken of as great judges, not one can be named who has exercised so potent an influence upon the jurisprudence of his country or state as Chief Justice Doe, unless Chief Justice Marshall, whose title to fame rests mainly on his interpretation of the provisions of the federal constitution, is an exception.

No general review of his work would be now appropriate. One great reform may be mentioned. With the concurrence of his associates, and by a wise and liberal application of the principles of the common law, he has made our legal procedure simple, speedy, and inexpensive. There is no common-law jurisdiction, it is believed, where one's legal rights can so quickly and cheaply be established as here in New Hampshire. In this respect he accomplished, without the aid of legislation,

what other states have sought to obtain, and have signally failed to obtain, by the enactment of codes. If during his long term of office he had achieved nothing else, the people would owe him a debt of lasting gratitude.

He came to the bench at the age of twenty-nine, younger than any man ever appointed to the bench in England, in this state (except Judge Woodbury), or, so far as I am informed, in any state. His youth was in some respects a source of strength. As a general rule, long practice at the bar tends to make us unduly conservative—we come at length to deprecate change in the law of rights by legislation, or in practice or procedure by the court; we acquire fixed habits of thought on legal subjects, the mind comes to move in mental ruts from which it cannot easily get away, and we are almost sure to have excessive reverence for precedents. All this Chief Justice Doe escaped. He regarded precedents as merely evidence of the law to be weighed with other evidence. The mere fact that one or more judges or courts have said that the law is so and so was of itself, in his mind, of very little consequence. He looked to the reasons assigned for the judgments. Any doctrine that tended to defeat rather than promote justice, he repudiated without hesitation, no matter how ancient it might be, or by how many or how able courts it had been sanctioned.

He had no pride of opinion. He was always ready to yield to an argument that he could not satisfactorily answer.

While he maintained with zeal and firmness the conclusions he reached after full and faithful examination, he always treated with deference the sincere opinions of others, however much they might differ from his own.

Aside from his great ability and exhaustive knowledge of the law, his most salient characteristic as a judge was his love of natural equity. If ever he was led astray it was by his intense desire to do justice or to prevent injustice to the parties before him. Thirty years ago he sent a criminal case to be tried by a referee. I recall the case merely to say that, whether in making the order he went beyond his authority or not, nobody, neither the counsel for the state, who opposed the order, nor anybody else who knew the facts, ever doubted for an instant that equal

and exact justice, in an abstract sense, was done to all the parties concerned.

Those who have dissented from his judgments would in most cases freely admit that the law ought to be as he held that it was. And so it may be said that his judicial mistakes, if any there be, have been made in the interest of justice.

Lewis W. Clarke, Justice, said:

It will be fifty years, next August, since I met Brother Doe at Hanover. I was there to enter the freshman class of 1846 in Dartmouth college, and he came from Harvard college, and entered the sophomore class. We became intimately acquainted at that time, passing three years together as school-mates, he graduating in 1849, and I in 1850. The intimacy thus commenced has continued with little interruption to the present time, and since August, 1877, we have been associated together in the work from which he has just been so suddenly called away. I am conscious that I do not yet fully realize the loss that has come to us. Time will make the personal bereavement more real, while it will soften its severity.

The life that has just closed has been active and vigorous. Chief Justice Doe was admitted to the bar in 1852, and commenced practice in Dover. September 23, 1859, he was appointed upon the supreme bench, which position he has ever since held with the exception of two years in 1874 and 1875. During this time he was not in practice. July 22, 1876, he was appointed chief justice, and his term would have expired, by limitation of age, April 11, 1900. During this long term of service, with the exception of the last few years, he was in vigorous health and industriously engaged in the duties of his profession. Patient and exhaustive in his examination of legal questions, his work was thoroughly done. The consideration of a question of law was a full and complete investigation from every point of view, and his inquiries ended only when nothing remained to be considered. He worked rapidly. His mind was remarkably keen in its perceptions, and broad and profound in its views. In an unusual degree he possessed the power of covering all the legal bearings of the

matter under consideration at once, so that nothing escaped his observation, and his examination was complete.

Twenty-five volumes of the New Hampshire Reports contain a record of part of his work, with which the members of the bar are familiar. They bear the impress of his character—his opinions are models in form and substance. They are inferior to none, and are imperishable. An examination of them will disclose the wonderful changes that have been wrought in the procedure and practical administration of the law in New Hampshire during the last thirty-five years, and more especially since 1876, under his chiefjusticeship. Whatever views may have been entertained of these changes, as they occurred, they are permanent. The old system will never be restored. They are regarded as an improvement in the administration of the law, both by the members of the bar and the people. Under the shadow of present bereavement, it is not the time nor the place to judge of the life-work, just ended, of the late chief justice. It has passed into history. In length of service, and in the amount of judicial labor, he has had no superior in this state, and he has wrought himself into its judicial history and become a part of it. He has made greater changes in the practical administration of the law than any judge who ever preceded him, and time will determine the value of his work.

Judge Doe's courtesy to the younger members of the bar was noticeable. He was kind and encouraging to the young lawyer, and his manner did much to remove the timidity which naturally disturbs most people doing business with the court. It has sometimes been thought that the chief justice failed to sustain the dignity of the court properly, on account of his neglect to observe some trifling matters of form, which he regarded as of no consequence.

In private life he was modest and unassuming, and had the confidence of all, and he will be remembered for the great services of his busy life, and the fact that he was an honest man.

The resolutions of the bar, which have been presented, express the estimation in which the chief justice was held by the profession. They will be entered on the records of the court, and a copy sent to Mrs. Doe.